

Supreme Court, U.S.

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No. 92-1964

In the Supreme Court of the United States  
OCTOBER TERM, 1993

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEALTH CARE & RETIREMENT CORPORATION OF AMERICA

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI

FILED JUNE 8, 1993

CERTIORARI GRANTED OCTOBER 4, 1993

BEST AVAILABLE COPY

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UNITED STATES OF AMERICA  
 BEFORE  
 THE NATIONAL LABOR RELATIONS BOARD  
 REGION 9  
 VOLUME I

---

Case No. 9-CA-26348

In the Matter of:

HEALTH CARE AND RETIREMENT CORPORATION OF  
 AMERICA, INC. D/B/A HEARTLAND OF URBANA, EMPLOYER

*and*

RUBY WELLS, AN INDIVIDUAL, PETITIONER

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Room 205  
 U.S. Post Office  
 150 N. Limestone  
 Springfield, Ohio

Wednesday,  
 August 16, 1989

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The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE: HON. STEPHEN GROSS  
 Administrative Law Judge

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APPEARANCES:

*On behalf of General Counsel:*  
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[8]

CYNTHIA CORDREY,  
 called as a witness herein, having been first duly sworn,  
 was examined and testified as follows:

DIRECT EXAMINATION

BY MS. VAUGHAN:

[73] Q. And then what was said?

A. So then Brenda asked me for my resignation again, and I refused to give them my resignation. And with that, she told me that they would have — we would have to sever our ties with the HCR as of right then.

Q. Did you say anything at that point?

A. Yes, I told her that was fine, but I wanted it in writing, why I had been fired. And she told me that was fine, she'd get it to me.

Q. Did you ever receive anything in writing?

A. No, I did not.

Q. During the shift when you worked as—or during the time you worked at Heartland and you worked as an LPN from 7:00 p to 7:00 a, was there an administrator or a DON that was on duty directly or present in the facility?

A. No, there wasn't.

Q. What was the understanding? Was there someone on call or what?

A. If we had a problem—if we had a problem we called a DON or the ADON. And, when we didn't have the Director of Nursing for two or three months we had to call Linda, because Sandy was our ADON, but didn't—she was not allowed to tell us anything, so we just called Brenda.

[73a] Q. Now, what happened when—you said that there were aides. The aides work three shifts; is that correct?

A. Yes.

Q. So, there were aides on duty from three 'til when?

A. Three 'til eleven.

Q. Three 'til eleven. You worked with aides?

A. Yes.

Q. When you came on at 7:00 p.m., go through a normal evening for us. What did you do in relationship to the aides? What contacts did you have with them?

A. Okay. When I came on, they were already working.

Q. Did they have certain patients that they were attending or—

A. Yeah.

Q. How did they know what to be doing at that time?

A. They more or less picked where they were going to go. It was just a rotation type thing, where if Jean

Stanhope was in the back hall last night, she was in the front hall the next night.

Q. So, what did they do when you got on the shift then?

[73b] A. I would find out who was working where, what aide was working at what division, because they divided it depending on the aides whether it was from [sic] hall or back hall. They would just report to me then.

Q. What kinds of things are you referring to, by out of order? Give us an example.

A. If someone felt warm when they took their temperature and she had a temp, they would tell me. If someone had a foley catheterizer [sic], they were used to maybe 700 output and they only had a 100 output.

Q. Were these things to do with patients care?

A. Yes.

Q. Now, what happened when there was a change of aides at 11:00 p.m.?

A. Okay, when the eleven to seven came on, I would go through every patient's name and tell them if there was any change.

Q. And what do you mean by change?

A. Okay, I would go through: Cindy Cordrey, fine; Jim Millspaugh, fine; Ruby Wells, fine; Mr. Dunphy—

Q. You're giving those as examples?

A. Yeah.

Q. Of patients?

A. Right. Mr. Dunphy, no output—oh, I'm sorry. I'm sorry.

[74] JUDGE GROSS: Could have used something else.

MR. DUNPHY: I hope that's not a Freudian slip.

A. But these are the things we did: elevated temp, face flushed, not responding well, lethargic; please watch him, I want his temp tonight.

Q. How did the aides coming on at 11:00 p.m. know which patients they were to tend that night? Did you have anything to do with that?

A. Well, they just took a section. There was front hall and back hall, and they just each—they worked together; that's just it.

Always before, from the time I've been there, the two aides on night worked together.

Q. How many aides were on from 11:00 p. to 7:00 a.?

A. Two on each wing, and we were supposed to have a float.

Q. I see. So the two aides that were assigned to A wing, who made that assignment, though? Who scheduled them to come in, if you know? Who made out the schedule as to who was to work when?

A. Either Linda or Brenda.

Q. Did you ever make out the schedule as to when aides were supposed to come in to work?

[75] A. No. I have copied the schedule before, because they had the same schedule.

Q. But did you play in part in deciding the days that a certain aide would work?

A. No.

Q. Now, after they came in, then, on their assigned day, if you know, how did they know, or how did they decide, the two of them, as to what they were supposed to do, divided on the floor?

A. Well, they just worked together. They went from front hall to back hall, together. They divided up the books, front hall and back hall. If one aide had had front hall the night before and the other aide had had back hall, then they just switched the halls.

Q. I see. How would you describe their work? As routine, or differing, or how would you describe what they had to do every evening?

A. It was a routine procedure.

Q. Did you have anything to do, or any responsibility, if an aide that was supposed to come in at 11:00 p.m. called in, right before the shift, and said they would not be in?

A. If they called in, I had to write an absentee slip up on them, and then I'd just go through whoever's day off it was; I'd call them to see if they could come in to [76] cover.

Q. Now, what did you do with the absent slip that you filled out on that person?

A. Leave it in Linda Cooper's door.

Q. Did you have anything to do with that absence report after you put the slip in Linda's door?

A. No.

Q. Then describe in more detail: How did you know who to try to call, then, to get a replacement? Was it up to you, to get a replacement, then?

A. Yeah.

Q. And how would you do that?

A. We had schedules: day shift, night shift, and the evening shift. Okay. I would go through the night shift first, and anyone that was off that night, I would call them, A or B wing, and see if they could come in. If they couldn't, before I'd start on days, I'd ask my evening shift girls that were already there, if any of them wanted to work overtime. If they said no, then I started calling day shift.

After that, I called—when Linda was there, I'd call Linda. When Linda wasn't there, I called Brenda, to find out what to do.

Q. And how did you know that procedure? How long had you been doing it that way?

A. I'd been doing this for—the time I started [77] work there.

Q. Always in the same order, going through the evening shift first, and then asking anyone on the night shift if—

A. The night shift, then the evenings, then the days. Yes.

Q. Why did you do it that way? What made you start doing it that way?

A. Marianne Curl, my past DON, director of nursing, had informed us that's the way it should be.

Q. So your past DON had told you to do it that way?

A. Yeah.

Q. Had you ever received any contrary instructions from any DON?

A. No.

Q. Any administrator?

A. No.

Q. So you'd always done it the same way?

A. Yes.

Q. Did you ever require someone to come in, if they said they couldn't? Did you tell them that they had to come in?

A. I didn't, no.

Q. Did you ever, or did you have the authority to [78] ever require someone to stay over, to cover a shift?

A. No.

Q. What happened if there was no one available? If you'd got through the entire list and no one could either come in or stay over, then what happened?

A. I had to call Brenda or Linda.

Q. And then what would happen, to cover the shift?

A. They told me, if there was no one to work, that I had to do the best I could.

Q. Was there another source of nurses that you could call on sometimes?

A. The nurse's aides? Yeah, you can call the pool, an agency that has aides.

Q. And what is a pool?

A. It's an agency where you call and you tell them that, you know, you're short-staffed on aides, and that you need an aide for the 11:00 to 7:00 shift, or whatever shift you need.

Q. Did you ever, were you ever in the position of having to call the pool?

A. For an aide?

Q. Yes.

A. I was never granted permission to call an aide.

[79] Q. Were pool aides ever called in?

A. While I was there, no. Maybe once or twice, but not that I have called.

Q. Was there ever a situation where you had to get a nurse — what happened if the nurse replacing you couldn't come in?

A. If the nurse couldn't replace me, if she called in sick, I had to go through the same list: the night nurse — or the day nurse that was off, I was to call her. It was just the opposite, then. I was to call her, and then I was to call the on-call nurses, which we didn't have any. So then I had to start just calling anybody, or asking — like, calling Ruby and asking her if she could work, and maybe they could try to find someone to replace her.

When I couldn't find anyone, I had to call Sandy or Linda or Brenda.

Q. And then what would happen?

A. At the time that I needed — the time that I called a pool was, Linda Cooper wasn't there. Sandy was there, so I called Sandy. And Sandy told me she had no authorization to call the pool. So she called Brenda, and then Brenda called me, and told me to go ahead and try to call

all the nurses; I told her I already had. And she told me that she would take care of it at six o'clock in the morning. And I said, what am I supposed to do at seven, when I'm [80] supposed to get off work; and she said, you can call the pool, but not til after eleven o'clock tonight.

Q. Did you ever call the pool for a nurse or an aide without prior permission from the administrator or the DON?

A. No.

Q. What were your instructions in that regard?

A. We were not allowed to.

Q. And by "we," are you referring to the nurses?

A. All of us.

Q. Okay. Did you have any responsibility about documenting or writing up aides?

A. Yeah.

Q. Would you describe that responsibility?

A. Okay. If an aide did something wrong—say if a patient's rails weren't up and the patient could have fallen out of bed—I've got to discipline, or at least talk to them. I wouldn't write them up for that. But if the incident went on and on, or someone complained and it was something more serious, I would write up a counseling form, that I did talk to them. And they had the chance to write down what their reaction was, and then I would turn it in to whomever.

Q. Would you be turning it in to the DON?

A. I would turn it—to her door, there. Yeah.

[81] Q. Now, when you wrote this, was this—did these instances have to do with deficiencies in their patient care?

MR. BIXLER: I object to the leading nature of those questions, your Honor. I think she can—

MS. VAUGHAN: I'll rephrase it, your Honor.

Q. What kinds of things did you document about aides? Can you give us a specific example?

A. Say if an aide reported to me that another aide did something wrong, which—say a aide said, this aide didn't feed, didn't do the bed right, didn't put the side rails up, and wasn't pulling her share of the work or something.

At that time, what I'd do was, I used to go to the DON and talk to her. So what she told me to do—and at the time it was Marianne Curl. Because I don't like taking someone else's word—it was Marianne Curl, so Marianne said, to solve the problem, Cindy, I want you to document—I want you to talk to her; I want you to document that you talked to her, so I know. And then if the problem goes on, then I can talk to her. So I said okay.

Q. And is that the procedure that you followed thereafter?

A. That's the procedure I followed, unless—at one time an aide did—a patient asked for a bedpan, and that [82] aide told her no. And the patient herself told me, and she was alert enough to tell me. So yes, I did write it up, that a patient had asked for the bedpan and she refused. And when I asked the aide, she said yes, that was true.

Q. And then what did you do with that documentation, or that write-up?

A. At that time, I gave it to Brenda Stabile.

Q. Now, once you had turned in what you had written up, in to either the DON or the administrator, did you participate in any way with a follow-up? Or did you know what happened after that?

A. No.

Q. Did you ever tell an aide, or tell an LPN—particularly an aide—that you were issuing them a disciplinary reprimand or a disciplinary warning?

A. No, I just told them I had to document it.

Q. What did you tell the aides, if you were having to document something? What did you tell them it was? Or—if you did.

A. I told them, this is not a write-up. I said, this is just to show you that I have talked to you. And with your signature on here, it shows Marianne that we discussed the problem. But I told them, this is not a write-up. Because they were afraid this was a write-up, the next one was whatever, and then they would be fired. I told them no, it [83] was not that.

MS. VAUGHAN: I'd like to have this marked as General Counsel Exhibit 4.

(WHEREUPON, General Counsel Exhibit No. 4 was marked for identification.)

Q. I'd like to hand you what's been marked as General Counsel Exhibit 4. Do you recognize that?

A. Yes.

Q. Okay. Can you tell us what it is?

A. That's where I wrote Jean up.

Q. And is that the form that you used for the write-ups that you normally—

A. Right.

Q. Is that what you normally used for write-ups, when you had to write an aide up?

A. Right. She told us, use the counseling form.

Q. Who told you that?

A. Marianne Curl.

Q. And is that what you always did?

A. Yes.

Q. And that was your practice?

A. Yes.

Q. I see. Now, what did you do with that form, once you filled it out? Or—strike that, just a minute.

What is your handwriting on that form?

[84] A. My handwriting is where it says "problem." Well, at the top, "date" and "employee." Then, where it says "problem," that's mine.

Q. Okay.

A. Then where it says "statement by employee," that is Jean Stanhope.

Q. Did she write that there when you were talking with her?

A. Yes.

Q. Okay.

A. And then "resolution of problem or action taken," that's my handwriting.

Q. All right. And you signed it?

A. "Signature of staff member."

Q. And then what did you with that, after you had spoken to Ms. Stanhope about it and filled that out?

A. At that time, it was Marianne Curl; we slid it under her door, the DON.

Q. The DON, you slid it under her door?

A. Mm-hmm, yes.

Q. Did you know whether—if you know, did that lead to any disciplinary action to Ms. Stanhope?

A. I don't know whatever happens to these. I never—I'm not told.

MS. VAUGHAN: I would move the introduction of [85] General Counsel 4, your Honor.

MR. BIXLER: No objection, your Honor.

MR. DUNPHY: No objection.

JUDGE GROSS: Received.

MS. VAUGHAN: Thank you.

(WHEREUPON, General Counsel Exhibit No. 4 was received in evidence.)

Q. Would you say that this is typical or not typical of the kinds of things that you would write up?

A. Typical.

Q. Do you remember what led to your writing that?

A. Yes. I went to Marianne Curl and she told me that she needed it documented, for further purposes.

Q. Why did you go to Marianne?

A. Because I don't feel comfortable writing up a patient when I don't actually see—I mean writing up a resident, when I don't actually see them doing this. Other aides will report so and so's not doing their share of the work. Well—

Q. Had that not occurred in this case—

A. Yes.

Q. —other aides had reported to you?

A. Yes.

Q. And then what did you do with that report? Did you take it—

[86] A. I went to Marianne, and then that's when she said, regardless, you need to talk to her and see if it's true, not true, and let her know that there is a problem with it. So I said okay.

Q. All right, thank you.

MS. VAUGHAN: I'd like to have this marked as General Counsel Exhibit 5, a two-page document.

(WHEREUPON, General Counsel Exhibit No. 5 was marked for identification.)

MS. VAUGHAN: Thank you.

Q. I'll hand you what's been marked as General Counsel Exhibit 5. Do you recognize that?

A. That's my writing, yeah.

Q. Can you tell us the circumstances around or why you wrote that?

A. I wrote this because that was a patient that was very alert, who did ask for bedpans, and Joanne had not given her the bedpan.

Q. And did you speak to Joanne Jenkins—

A. Yes, I did.

Q. —about it?

What part of that document contains your writing?

A. All of it.

Q. And did you talk to Joanne Jenkins about that [87] matter?

A. I talked to her. She said that was fine if I wrote her up. You know, that she'd never do it again; she didn't need to write anything, that she was guilty of it.

Q. And what did you do with that document?

A. I gave this to Brenda.

Q. And, if you know, did that lead to any further disciplinary action? If you know.

A. I don't know what happened after that.

Q. As far as you know, did Jean Stanhope continue to work—

A. Yeah.

Q. —at the facility after you had given that write-up?

A. Yes.

Q. Did Joanne Jenkins continue to work at the facility after—

A. I don't know when, exactly, but after a while she was no longer employed there. But I don't know if she quit or was fired, because she was also going to school and had talked about quitting. She was going to college.

Q. Even today, you do not know whether she quit or she was fired?

A. I have no idea.

Q. Did you ever make a recommendation, to either [88] the DON or the administrator, or anyone in management, that action be taken against Ms. Jenkins?

A. I told them we had a problem with her.

Q. Did you make any recommendations as to what action should be taken?

A. No.

MS. VAUGHAN: I'd move the admission of General Counsel 5, your Honor.

MR. BIXLER: No objection, your Honor.

JUDGE GROSS: Received.

(WHEREUPON, General Counsel Exhibit No. 5 was received in evidence.)

MS. VAUGHAN: Now then, I'd like this marked, as General Counsel 6.

(WHEREUPON, General Counsel Exhibit No. 6 was marked for identification.)

MS. VAUGHAN: Thank you.

Q. I'd like to hand you what's been marked as General Counsel Exhibit No. 6. Do you recognize that?

A. Yes.

Q. What are those copies of?

A. Those are absence reports. When someone does not call in or show up, or if someone calls in, we are required to make these out.

Q. Is that the absence report to which you were [89] referring earlier in your testimony, that you filled out if someone called in?

A. Yes.

Q. And what did you do with these absence reports after you filled them in?

A. Put them in Linda's door.

Q. And Linda being the DON?

A. Received them. If Linda wasn't there, we put them—well, we still put them there, and Brenda got them.

Q. And did you ever make a recommendation that somebody ought to be disciplined because they were absent, or make a recommendation as to a specific action to be taken?

A. No.

MS. VAUGHAN: And I'd like to have this marked as General Counsel Exhibit—or I'll move the admission of GC 6, your Honor.

MR. BIXLER: No objection, your Honor.

MR. DUNPHY: No objection.

JUDGE GROSS: Received.

(WHEREUPON, General Counsel Exhibit No. 6 was received in evidence.)

MS. VAUGHAN: This marked as 7.

(WHEREUPON, General Counsel Exhibit No. 7 was marked for identification.)

Q. Can you identify what's been marked as [90] General Counsel Exhibit 7?

A. That's my writing.

Q. So did you write that?

A. Yep. Yes.

Q. And what led to your writing that? Or why did you write that?

A. I'm reading it.

Q. That's okay.

(Pause)

A. Okay.

Q. Did you ever turn this in to management?

A. Yes.

Q. To whom did you turn that in?

A. Probably under Brenda's door, or Linda's.

Q. And why did you write that?

A. Because I thought she ought to know that the other aides were getting upset with Gloria because she wasn't coming in to work. They were having to cover her hours, after she had just taken off all the holidays.

Q. Did you make any recommendation, to anybody in management, that Gloria Thompson be discharged?

A. No.

Q. And, in fact, was she discharged? If you know.

A. At the time, I didn't know if she had been [91] discharged or what. No.

Q. Did she work after the January 2nd, '89, date that you wrote this?

A. Yeah. She had worked nights, but when she came back, she worked days; she came in on day shift.

Q. Do you have any responsibility for an aide's timecards if they work over?

A. They're signed, that they were there. We sign our initials so that the DON knows that they were working and not just in the building, not clocking out.

Q. And then what do you do with that timecard?

A. It just goes right back in their slot.

Q. Do you make any recommendation on their timecard, that they were—there was some impropriety or anything like that?

A. No.

JUDGE GROSS: Do you have a timecard?

THE WITNESS: Yes.

Q. Who initials your timecard, if anybody, when you work over?

A. The other nurse that I'm relieving, or that is relieving me, signs that I was actually working while I was there.

Q. And how do you know to do that? How did you know to sign aides' timecards, to verify their having been [92] there?

A. Ledra Schmidt, when she was the ADON, she used to do timecards, and she was running into problems with there being a lot of overtime—or people not clocking out, forgetting to clock out. So she told the nurses from now on, if the work wasn't done and they had to work over 15 minutes, would we please initial it, so she'd know that they were actually working, rather than just having a pizza down in the cafeteria and not clocking out until later, to get overtime.

Q. Did you ever make any recommendation as to whether or not they be paid for that time?

A. No.

Q. You just simply initialed the hours that they were there, or that they were over.

A. Right.

Q. In what instances would an aide stay over? How would that come about, why would that be?

A. A lot of wet patients, incontinent patients, on last bed check. A death at 10:30 at night. An emergency, to where we had to ship a patient to a hospital.

Q. And how would the aide know that she or he was required to stay, or should stay?

A. They just knew that they were not allowed to leave the floor until their work was done. And that was not my rules; that was Marianne's rules.

[93] Q. The former DON?

A. Yes.

Q. Was that ever modified or changed in any way by the present administrator—

A. Not that I know of.

Q. —or Brenda? Okay.

Did you have anything to do with aides' evaluations?

A. When I first started working there, yes, I did. And then in January, I filled out one, and then the day before I was fired, I helped fill out a couple with Connie Thatcher, the LPN that shares the 3:00 to 11:00 shift with me.

Q. Okay. Now, you say you filled out some when you were first hired. When was that? During what time period did you fill some evaluations out?

A. Okay, let me see. I started in '84, so it would probably been—maybe the end of '84, and then '85.

Q. Did you do any during '86 and '87, or '88, that you recall?

A. Not that I recall. I might have, '86, but I can't—it was a short period of time that we did it, and then we didn't do it any longer.

Q. Do you know why you quit doing them?

A. Yeah. Marianne finally got a — Marianne [94] Curl, the ex-DON, finally got an ADON that, once she learned everybody, then she went ahead and did the evaluations.

Q. So they were done by the ADON for a period of time?

A. Yes.

Q. Then, after that period of time, when was the first time you had anything to do with an evaluation again?

A. January — the end of January.

Q. Of '89?

A. Yes.

Q. Do you recall how that came about or what you did? First of all, what did you do?

A. Okay. When I came in to work, they told me that I had an envelope in the narcotics lock-up, which is under the sink. So I got it out, and it was from Sandy Townsend, it was on Joyce Daniels; and on the note, it said: Cindy, can you please help me out — can you please help me with the evaluation — whatever. But she had a list of things I could not mark.

Q. And what were those, if you recall?

A. Absenteeism, tardiness, personal appearance, and overall evaluation.

MS. VAUGHAN: Let me have this marked as — what are we up to, 7? General Counsel Exhibit 7?

JUDGE GROSS: Eight.

[95] (WHEREUPON, General Counsel Exhibit No. 8 was marked for identification.)

Q. All right, I'd like to hand you what's been marked as General Counsel Exhibit No. 8. Do you recognize that document?

A. Yes.

Q. Is that the evaluation to which you were just referring?

A. Yes.

Q. All right, now then. If you'll look at that, tell us what you filled out.

A. Okay. I filled out number 2, I filled out —

Q. You made that check?

A. Yes.

Q. In the number 2 box?

A. Yes.

Q. All right.

A. I filled out number 3, I filled out number 5, down there in "comments," that's my comment. I filled out number 6, and I filled out number 7. And that was the last, except for my signature.

Q. Did you make any recommendation at all as to the overall evaluation?

A. No, we were not allowed to touch that.

Q. Did you discuss or did you participate in the [96] discussion of this evaluation with the employee involved?

A. No, we're not allowed to do that.

Q. What did you do with this evaluation, or performance appraisal, after you finished the checks?

A. We had to stick it back in the envelope and — Sandy had left a note saying we could leave it locked up under the sink or slide it under her door; and I slid it under her door.

Q. Did you fill in the name at the top, and the dates and so forth? Is that your handwriting?

A. No, it's not.

Q. Was that given to you with that on it?

A. Yes.

Q. And did you have anything to do with it after you filled out the portions that you described to us?

A. No.

Q. Did you make any recommendation at all, as to what should or should not happen to Ms. Daniels, on the basis of that appraisal?

A. No.

MS. VAUGHAN: I move the admission of 8, General Counsel 8.

MR. BIXLER: No objection.

MR. DUNPHY: No objection.

JUDGE GROSS: Received.

[97] MS. VAUGHAN: Thank you.

(WHEREUPON, General Counsel Exhibit No. 8 was received in evidence.)

Q. And then you started to testify that, a few days before you were terminated, you did some evaluations.

A. Yes.

Q. Can you tell us how that came about, or who instructed you to do that?

A. When I came to work, Connie Thatcher said that Sandy had brought—Sandy Townsend, the ADON, had brought down some evaluations that she needed done; that she needed both of our input, because Connie and I had both worked with the girls from 3:00 to 11:00. Well, she worked from 3:00 to 7:00 with them, and I worked 7:00 to 11:00 with them.

Q. Okay.

A. So we went through the evaluations; once again, it had been told to Connie, you know, what we were not allowed to fill out. So that's what we did. Connie and I filled them out together. She signed, like, half, and I signed the other half.

Q. And was Melinda Stillgas one of the aides that you filled out at that time?

A. Yes.

MS. VAUGHAN: I'd like to have that marked as General Counsel Exhibit 9.

[98] (WHEREUPON, General Counsel Exhibit No. 9 was marked for identification.)

Q. I hand you what's been marked as General Counsel Exhibit 9. Is that one of the evaluations, or performance

appraisals, that you filled out shortly before you were discharged?

A. Yes, it is.

Q. And what portions of that performance appraisal did you fill out? First of all, is this your handwriting at the top, with the person's name and so forth?

A. No, it isn't?

Q. Okay. Did you fill out any of the top part before the bold black line?

A. No, I didn't.

Q. What did you fill out or what did you check below that line?

A. Well, I checked 2—doesn't look like my check mark—2, 3, 5, 6, 7.

Q. Did you have anything to do or discussion with any management official about the check for overall evaluation?

A. No.

Q. Did you have any recommendation or have any conversation with management about the "recommend continued employment"?

[99] A. No.

Q. What did you do with that evaluation, after you completed your part?

A. Connie and I both put them in the envelope and stuck them under—under the sink; I think we were told to leave them under the sink, at that time, locked up, and Sandy would pick them up in the morning. That's where our narcotics were kept.

Q. After making the check marks that you did, did you—were you consulted in any way, or make any recommendation as to whether Ms. Stillgas should get a raise or a demotion, or a promotion, or anything like that?

A. No.

Q. Did you see or hear anything about that appraisal after you filled out the checks and sealed it and put it back under the sink?

A. No.

MS. VAUGHAN: I'll move the admission of 9, your Honor.

MR. BIXLER: No objection, your Honor.

MR. DUNPHY: No objection.

JUDGE GROSS: Received.

(WHEREUPON, General Counsel Exhibit No. 9 was received in evidence.)

Q. Did you play any part in hiring people?

[100] A. No.

Q. In firing people?

A. No.

Q. Did you ever recommend that anyone be fired?

A. No.

Q. Did you ever recommend that action, or disciplinary action, be taken against an employee?

A. No. Other than to, you know, write what was going on. But nothing more than that.

Q. Did you yourself ever issue a suspension? Did you ever suspend anyone?

A. No.

Q. Did you ever issue a formal disciplinary written reprimand to anyone?

A. No.

Q. Do you recall an incident where an aide became abusive on the floor, with a baseball bat?

A. Yes.

Q. About what time was that, or how long ago?

A. Before—

Q. Approximately.

A. It was before Christmas; October, November.

Q. And you don't have to name the aide, but essentially tell us what happened.

A. I asked him what was wrong, because you could [115] A. Six per side.

Q. And you're referring to the two wings?

A. Yes.

Q. And how many aides did you understand were to be in attendance from the 3:00 to 11:00 p.m. shift?

A. Four per side.

Q. And how many aides did you understand to be required to be in attendance between 11:00 p.m. and 7:00 a.m.?

A. Two per side, with a float.

Q. Could you explain what you mean by a float?

A. A float is an aide that has specific duties given to her by the DON, and she works half the night on one side and half the night on the other side. So she works A wing part of the night and B wing part of the night.

Q. Now, is there a listing pertaining to nurse aides' responsibilities, which is set out in any part of the facility, about routine responsibilities of the nurse's aides?

A. Yes.

Q. And where is that located?

A. In the dirty utility room.

Q. And what, essentially, is contained on that listing?

A. It's like on Monday, clear through the week, they have specific job duties that they are required to do along with taking care of the patients; such as, say, Monday [116] night, clean bedpans and urinals; Tuesday night, wash wheelchairs; Wednesday night, clean the linen cabinet.

Q. And for each day of the week, there was a listing of responsibilities that the nurse aide on duty at any particular time was required to perform on that particular day?

A. Right.

Q. Was there a listing of job responsibilities for nurses at any location in the facility?

A. Yes.

Q. And where was that?

A. At the nurse's station.

Q. And could you describe the nature of that document?

A. Like on Sunday night, the nurse was to clean the refrigerator; defrost and wash it out, and clean out the meds. Tuesday night, say, wash down the medicine cabinet. The next night, maybe go through all of the meds, to make sure that the medicines that were out of date were pitched.

Q. And just to clarify your testimony: So that there were specific listings for specific days of the week, that a nurse was required to perform certain responsibilities on those particular days?

A. Yes.

Q. Who do you understand that established those [117] documents, both for the nurse's aide and the nurses? Who do you understand established those work responsibility documents?

A. The DON.

Q. Were you involved, at all, in that, or any of the nurses, to the best of your knowledge, in preparing those listings?

A. No.

MR. DUNPHY: Your Honor, at this time I would like to have marked as an exhibit an additional employee handbook. I would be happy to provide the original at this time; however, I would like to substitute it at a future date with a copy, because it is my only original copy. And unfortunately, I intended to present only certain parts of

this, therefore I don't have any copies other than one other copy, to provide at this time. Although I believe both counsel, I'm sure, are aware of this particular manual.

JUDGE GROSS: Let's go off the record.

(WHEREUPON, there was an off-the-record discussion.)

JUDGE GROSS: Mr. Dunphy.

MR. DUNPHY: Thank you, your Honor.

Q. Mrs. Cordrey, I'm going to show you a document which I would ask be marked for identification purposes as Charging Party's Exhibit No. 1, with permission of

[152]

#### STEPHENIE JACKSON

called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MS. VAUGHAN:

[156] independent, and such as this. And it just goes right on down the line til you cover all of your residents.

Q. Okay. And besides just holding them out in your hand, like you described, and the aides selecting the sheet they want, how else have you handled which aides get which patients to care for?

A. As I said, I have assigned them myself before. I've taken the sections before me and told a particular aide this is where you - you know, you'll be working today.

Q. And how do you make that decision?

A. Just more or less by looking at where they had been the day before, and then I just try to change that up, so that no one is working in a particular section for a long period of time.

Q. Is there any difference - or are all the aides able to do all the work of the aides?

A. They're supposed to.

Q. And how would you describe their work, day in and day out? How would you describe that as, or what kind of competence or expertise would that require?

A. I'm not sure.

Q. You don't understand the question?

A. No.

Q. What kinds of things do the aides do?

A. Routine care: bathing — well, cleansing,

[162] Q. Have you ever had an occasion to document or write up an infraction, or some lack in an aide?

A. I can't say that I have actually —

I have sat in to be the second witness, or while one has been, you know, written up.

Q. Oh, I see. And who would ask you to be a witness to the write-up?

A. Well, it was basically both of the nurse — you know, the nurses on at the time. And this was just a recent, you know, issue, where we had an aide who had —

Well, there's questionable abuse, let's put it like this, and we had to talk to her. But it was me and the other nurse; we did the counseling. And that was basically how it went.

I should say it's a counseling session. We don't do the so-called reprimanding.

Q. And when you say we, are you referring to the nurses?

A. The other nurse, yes, that was —

Q. Who does the reprimanding?

A. That usually is left in the hands of the director of nursing.

Q. After you do a counseling, do you make any recommendation of further action for them?

A. No.

[163] Q. What do you do with your — do you document your counseling?

A. It's documented.

Q. And what do you do, what —

A. And then it goes to the director of nurses; and then, from that point on, it's up to her to — or it has been habit that, from that point on, I guess, we really just don't know what happens. It's in her hands.

Q. And what kinds of things — I mean, do you initiate a counseling session, or are you told to perform one?

A. I can initiate it. A lot of times, I have spoken with the director of nurses first, regarding an issue, and have then been recommended to write them up or a verbal counseling.

Q. Okay. What kinds of things warrant a counseling with an aide? Can you give us some examples?

A. Well, I would basically say, neglect of duties. Of course, naturally, if there's any question of abuse or mishandling by the aide.

Q. Mishandling the patients, you mean?

A. Patients, yes.

Q. I see. Have you ever counseled an employee with regard to something that didn't directly relate to patient care?

A. No, not that I can recall.

[164] Q. For instance, if there's a problem with absenteeism or something like that, would you do the counseling of that?

A. No.

Q. Who would do that?

A. That would go back to the director.

Q. Now, when you were working on the 7:00 a. to 7:00 p. shift, I take it, I understand that there was a change of aides at the shift at 3:00.

A. Yes.

Q. Now, how long were the DON and the ADON in the facility, on average?

A. An hour, maybe.

Q. You mean, after that shift changed?

A. An hour after that.

Q. So what was the procedure if an aide called in and wasn't going to be arriving at 3:00, or wasn't going to—was calling off for the shift? What happened then?

A. Well, it fell upon—if I was the nurse that took the call, it was up to me to find a replacement at that point.

Q. And how do you do that?

A. You get on the phone, and you just start calling everybody who's off schedule and see if they would come in to work.

[176]

#### CROSS-EXAMINATION

BY MR. BIXLER:

[178] Q. What made you unhappy about it?

A. Because it had been more or less our, as the nurse on the floor, our opportunity to be able to divide the sections, according to how we felt the sections should be divided to benefit, you know, our residents.

Q. In other words, this says, if there are six aides on a wing and there are 45 residents, each aide will have nine residents. And that's probably incorrect math.

But was this your understanding of what Linda Cooper was saying, would be that you would take the number of residents and divide by the number of aides, and that's how many patients each aide would be assigned?

A. That was my understanding.

Q. Okay. And prior to this coming out, you were not doing it that way; is that correct?

A. —A lot of times, maybe, our assignments would not be made up that way; because there were people who required more care. So in other words, not to load them down, then we'd—our assignments were made up somewhat differently.

Q. I think there's a phrase I'm not completely familiar with, but I think it's acuity level.

A. Yes.

Q. Do all the residents have an acuity level?

A. Yes, they do.

Q. Would you explain the acuity level?

[179] A. It's hard for me to put it in terms.

Q. Okay. Could I suggest that it really has to do with how much care that particular—

A. The level of care—

Q. Yeah.

A. —usually, yes.

Q. Okay. So before this came out, is it true that what you would try to do is, to assign sections to each aide, and the sections would—you would try to make the sections equal, in terms of the acuity level of all the patients; is that correct?

A. This was an attempt, yes—

Q. Okay.

A. —made.

Q. And so you'd try to make a judgment as to what would be a fair workload for the aides.

A. For each aide.

Q. For each aide. Okay.

Now—

JUDGE GROSS: Let me ask about that.

What are some of the things that go into acuity level? Continent or incontinent, would that be one?

THE WITNESS: Well, yes.

JUDGE GROSS: What are some of the others?

Q. Ambulatory and nonambulatory?  
 [180] A. Yes.

Q. What do we mean by those terms?

A. Well, ambulatory, they can walk; nonambulatory, they cannot walk.

Incontinent, well, they cannot hold their bowel or bladder; and continent, they can.

Q. And I suppose weight might have something to do with it, if a patient is 250 pounds, versus somebody who's 125 pounds?

A. That could probably play a part of it, yes.

Q. And then, with respect to those individuals, somebody who's 250 might have control of themselves completely and be able to help you lift, while somebody who's smaller might be just dead weight.

A. Well, that's true, too.

Q. Those are some of the types of things that go into acuity level?

A. I would say so, yes.

JUDGE GROSS: What about the nature of the medical problem?

THE WITNESS: I don't know that that affects it or not. I would hate to—I would not want to say for sure, because I do not know. I don't know for sure.

JUDGE GROSS: That wouldn't be part of your formula?

[181] THE WITNESS: No. No.

Q. Well, would it make a difference, if somebody was a tube feed and not a tube feed?

A. Not so much for an aide's assignment, no.

Q. And I suppose there would be people there who could feed themselves, and people who could not feed themselves.

A. True.

Q. Okay. Anything else that comes to mind, in determining acuity level?

A. No.

Q. Okay. So, before this note came out from Linda Cooper, you were trying—you were making judgments as to an individual's acuity level, and trying to equal out the workload of the aides; is that correct?

A. We did make attempts to try to make the workload—

Q. And that was an important part of your daily work assignment, wasn't it?

A. That was a part—I would not say it a daily. Because once we had made our sections, they became standard.

Q. That's right. Because there may not be any change in the acuity level for quite some time; is that correct?

A. Well, that's quite true.

[182] Q. But then there could be new residents, new admittees, and/or there could be a change in the acuity level of a particular resident, so that that might cause your sections to get a little bit out of whack.

A. It could vary. It could end up making someone else's load a little heavier. But once our sections were made, that was pretty much standard.

If we had someone who died, they were no longer in that particular room; whomever was admitted to that room, that's where they ended up on that particular section. Because sections are very hard, to have to make up on a daily basis, so pretty much, once they were made up, they were standard.

Q. Would that be something that you might work on other than between 7:00 and 3:00, working up your sections?

A. You could do it. It would probably be more appropriate to do it that way.

Q. Did you ever do that, Mrs. Jackson?

A. Ever take my sections home, to work on them? Yes, I did.

Q. Okay. Now, when Mrs. Cooper sent out this note, which has been marked as General Counsel 11, do you know whether she was still expecting you to make adjustments based upon acuity levels in the aide assignments?

A. No, I don't know.

[183] Q. You don't know whether she was or not.

A. No, I don't.

Q. If everybody showed up and there were no absences, no call-ins, would the ordinary staffing level be six aides on your shift and wing?

A. Yes.

Q. Okay. And I take it that if only five showed up, then you would have to make adjustments in the assignments, to get as much of the work done as you could—

A. Yes.

Q. —is that correct?

And the same thing if there's only four?

A. Yes.

Q. And you said you even went down to three aides at some time.

A. Yes. But for my shift; this is really, basically, I'm saying, to cover all shifts, too. We have assignments, you know, made up according to how many aides we have—

Q. Okay.

A. —on per shift.

Q. Right.

A. But for days, it has gotten down to four.

Q. Never gone down to three, that you can recall?

A. I'm going to be honest and say I cannot truly [184] recall.

Q. Okay, thank you.

Could you, for the benefit of us who do not work in a nursing home and have not for quite some time, could you tell us what the daily regimen might be, in terms of the workload of the nurse aides?

A. For the nurse aides?

Q. Yes, on the 7:00 to 3:00 shift. I realize that there's different things going on in different shifts. But on your shift, and not in detail, but—I know you have to get up, get breakfast, baths, those types of things. What would you do?

A. As far as their duties go.

Basically, they have their routine down pat, as far as they know they have to pass ice, and they have to pass trays and pick up trays. Of course, as I say, bathing and grooming the residents; getting them to their meals, if they should go to diningroom; potty. They are various, various responsibilities for the aides through a shift.

Q. Would bathing and showering be one of the more major tasks—

A. Yes, it is.

Q. —that they would do? Pardon me?

A. Yes, it is.

Q. Okay, thank you.

[185] And not every patient would be bathed every day; is that right?

A. Every resident is bathed every day, except that they are not complete bathes every day.

Q. I see. Some—

A. Some receive partials.

Q. Some of them would go to the shower or to the bathtub, and others might be cleaned in their room or in their bed.

A. In the room.

Q. Okay. And I suppose you would try to work it out so that aides would not all have to—that one aide wouldn't have to give all the baths one day, and, you know, that that particular assignment might be adjusted and worked out fairly for everybody.

A. Honestly, to try to vary assignments so that the same aide did not have to end up in the same section every day for a week or two weeks.

A. And, doing those types, that type of work on your part, would you agree that that's really—it's important in terms of the morale of the aides, I suppose, isn't it?

A. Yes, it is.

Q. And it's important to the overall quality of the care that the residents get, isn't it?

[186] A. Yes.

Q. Okay. Just a few more, Ms. Jackson.

Would you be responsible for assigning the lunch breaks? Well, let me strike that.

How many breaks and lunch periods would they get in a day?

A. An aide gets two breaks a day, and her lunch period.

Q. Okay. And how long are the breaks?

A. Breaks are 15 minutes, and lunch is 30.

Q. Okay. And would you be responsible for sending the aides on break and on lunch?

A. I never assigned breaks. I let them decide amongst themselves, at which point in time they would report to me, who was going on first break or who was going to second break. But I usually let them have the freedom to decide this amongst themselves.

Q. As long as there is still proper coverage—

A. As long as the—

Q. —on the floor.

A. Right.

JUDGE GROSS: Could you have done it a different way?

THE WITNESS: I could have told them when they could go. I could have said, you know, so and so, you go to [187] break at 9:15, and then—I could have chose to do that.

Q. Now, I think you mentioned that the aides call you by your first name.

A. Yes, they do.

Q. And you call them by their first name.

A. Yes.

Q. Okay. And you would call Linda Cooper by her first name, wouldn't you?

A. I call her Linda, yes.

Q. And Brenda Stabile, you would call Brenda?

A. Brenda.

Q. Okay. Now—

JUDGE GROSS: How about the aides? Do they call Brenda Brenda?

THE WITNESS: Yes.

Q. In some ways, it's a pretty congenial place, I guess. At least you're on a first-name basis.

A. Yes, we're on a first-name basis.

Q. Okay. Fair enough.

Now, let me ask you—

(Pause)

MR. BIXLER: Let me have this marked as Respondent 2.

(WHEREUPON, Respondent's Exhibit No. 2 was marked for identification.)

[190] A. Yes.—

Q. Okay. And were you aware that you could get one of these forms from the administrator or the DON, if you wanted to write up an employee?

A. I could not say that I was truly aware that I had the choice in—

Q. Okay.

A. —using one of these forms.

Q. All right. So you would just use the counseling—

A. Counseling form.

Q. Okay. And did you say you just filled out a counseling form on one occasion?

A. I've never filled out a counseling form, myself. As I said, I chose to speak with an aide before, verbally.

Q. Okay.

A. But I've never, really, truly put anything into writing.

Q. Okay. You understood, though, that you could have filled out the counseling form?

A. Yes.

Q. Okay. What was that particular incident that you're referring to, now?

A. I just—that I can recall most recently, [191] just an incident where one of the residents was complaining about an aide and her lack of giving him care, because she felt he could do it himself. A lot of his care he could do himself. And I then had to take her to the side to speak with her and to talk to her about this.

Q. Okay. So the aide wasn't giving care to a particular resident because the aide thought that the resident could do some things—

A. Could do more for himself.

Q. I see. Okay.

And you did take the aide aside and counsel with the aide.

A. Yes, I did talk to her.

Q. All right. And would it be correct that you were satisfied with that conversation and the aide, to the point where you decided not to do the counseling form?

A. I didn't take any action against her. I did tell her that, if it would occur again, I felt at that time we would have to go far beyond what we had done, and, I think, then, take it up with the director of nursing and, probably, then, make it a true warning.

Q. Okay. Now, you said that was recently?

A. Yes.

Q. Would it be fair to say that that has happened on occasions, at the times, rather than this just [192] one recent occasion?

A. Yes.

Q. Okay. All right. Now—

(Pause)

MR. BIXLER: Let me have this marked as Respondent 3, I believe.

(WHEREUPON, Respondent Exhibit No. 3 was marked for identification.)

Q. Mrs. Jackson, could you take a look at the Respondent's Exhibit 3, which is the performance appraisal, and let me ask if you recognize that form.

A. Yes, I do.

Q. Now, have you had performance appraisals on this form, of your own performance over the years?

A. Yes.

Q. Okay. Have you also filled this form out for some of the aides that worked for you, or portions of the form?

A. Yes, I have.

Q. Okay. Would you tell me how that procedure works, in filling that form out?

A. Well, you check-mark whether it's excellent, above standard, standard, or below standard. Usually, when I have done it in regards to an aide, I will cover human relations and attitudes towards work, personal appearance, job [193] capability, development, and patient care.

Q. Okay. The punctuality would be a subject that, I guess, we have actual records on; is that correct?

A. Correct.

Q. All right. So you wouldn't fill that out.

A. No.

Q. Would you do the overall evaluation of the aide?

A. When I look at this, I believe I have check-marked the excellent, above standard, standard, below standard. Beyond that point, it was no longer mine.

Q. Okay. So over in the righthand column, there is a section there that says "overall evaluation."

A. Yes.

Q. And you believe that you have checked off one of those designations for the aides that you'd do this on?

A. I believe I have.

Q. Okay. But then you wouldn't have gone any further, with "recommend continued employment," the next section; you haven't filled that out?

A. No.

Q. All right. Is there anyone that you recall recommending, to the DON or the administrator, that their employment not be continued?

A. No.

[194] Q. There's been no probationary employees that you have told the DON or the administrator, or somebody else, that they shouldn't be continued employment?

A. I don't know that I've ever actually said that I don't believe that they should, you know, have continued—no longer work for us. But I do believe that at some points I have risen questions as to the capabilities of an aide, as to whether she could handle the job.

Q. And do you recall that, when you raised that question or issue, that that was taken into consideration, as far as you knew?

MS. VAUGHAN: Objection. I think she's testified that she didn't recommend to either continue the employment or otherwise, and I think it's beyond her scope of knowledge, when she said it wasn't hers any longer, I think was her testimony.

JUDGE GROSS: Well, why don't you rephrase the question.

MR. BIXLER: Well, the question was, whether she knew whether the issue that had raised had been taken into consideration, as to the decision.

JUDGE GROSS: All right. You can—

MS. VAUGHAN: I think she's—

JUDGE GROSS: You can answer the question, Ms. Jackson.

[195] A. Not that I know of.

Q. Okay. Do you know whether—and maybe this is just the same question, slightly rephrased, and allow me:

Do you know whether anyone was terminated, based upon issues that you had raised with management about their performance? And I'm referring to a probationary employee, now.

A. I can only answer that no, not that I can recall.

Q. Okay, very good. Thank you.

Now, if we would just take a look at the section under—well, let me ask you this question. I'm sorry.

When you filled this form out, would it be fair to say that you do try to do a good job of filling this form out?

A. Yes.

Q. And you consider that your filling this form out, evaluating the employee, is an important task that you have to perform.

A. I feel that it would be an important task, yes.

Q. Okay. And when you do it, you take it seriously; is that correct?

A. Yes.

[196] Q. And let's just take "human relations."

Now, when you fill this out, now, under "human relations," there are subcategories of "cooperates with supervisors, is courteous and friendly, controls his emotions for the best interest of all, and works well with other employees." Then there's a section for "needs improvement in" and some blank spaces.

Now, when you're filling this out on an employee, and using number 2, I take it, you would review these items mentioned under "human relations," would you not?

A. I would attempt to.

Q. And then try to reflect back on the employee's performance, over the years—

A. Yes, I would.

Q. —as it relates to this.

A. Yes, I would.

Q. And then, based on that, you would try to make a judgment as to whether you thought the person was excellent, above standard, standard, or below standard; is that correct?

A. Correct.

Q. Okay. And you would essentially follow the same procedure with each one of the items that you're responsible for?

A. Correct.

[197] Q. Okay. And then, I suppose, in doing the overall evaluation, you would try to make a judgment of where, based upon all the scores that the person had, where their total performance evaluation ought to fit; is that correct?

A. That would be correct.

Q. Now, would it be fair to say, Ms. Jackson, that the performance appraisal, again, would be something that, done properly, would be helpful to the morale of the employee?

A. Yes.

Q. By giving him honest feedback about where he or she is good or bad.

A. Yes.

Q. Okay. And doing these in the proper way, would you agree, could also help with the delivery of quality nursing care at the facility?

A. I believe it could.

Q. Okay. Now, you mentioned that you did not attend the inservice. It's been discussed quite a bit here, and I believe it was a "mandatory" inservice—

A. Yes.

Q. —in February?

You did not attend that?

A. No.

Q. Okay. Did you have notice of it?

A. That I can't recall.

[205] MR. BIXLER: I have no further questions, your Honor.

#### REDIRECT EXAMINATION

##### BY MS. VAUGHAN:

Q. Mr. Bixler gave you a hypothetical example of, if you were short, and would you or could you ask someone to stay over until at least you could get hold of the DON. Had that happened?

A. Not that I can truly recall.

Q. When you have asked aides to stay and help out, can you require them to? Or is that a voluntary—

A. Make them stay?

Q. Yes.

A. No.

Q. Do they know that?

MR. BIXLER: I'll object, your Honor.

JUDGE GROSS: Overruled.

A. I don't know if they know that.  
 Q. Is it more or less a voluntary basis?

A. It truly is.

Q. Okay. Is that also true, when you have to try to go through the list to call someone in to cover someone's absence? Is that a voluntary basis?

A. Yes, it is.

Q. Do you have any authority to require them to [206] come in?

A. I cannot make them come in, no.

Q. After you initial their timecard, what does that mean? Why do you initial it?

A. Simply to show payroll that they have worked those extra hours.

Q. Do you make any independent judgment, as to whether they get paid or not, or is that up to payroll?

A. Well, no, I make no independent judgment there.

Q. Do you perform an appraisal on every aide that works on your shift?

A. No, I don't.

Q. How do you know when to do one and when not to do one?

A. When the director asked me if I would do a particular aide, then I do it.

Q. And how often does that come about, or what percentage of the aides would you say that you had something to with it?

A. I could probably count in on both hands, how many I've ever filled out.

Q. So would you say it's—well, in the other cases, who does the aides?

A. And I'm talking over the five-year period,

[220]

**PROCEEDINGS**

**CYNTHIA CORDREY,**

called as a witness herein, having been previously sworn, was examined and testified as follows:

**CONTINUED CROSS-EXAMINATION**

**BY MR. BIXLER:**

[241] Q. Now, Mrs. Cordrey, I'd like to show you what's previously been marked as Respondent's Exhibit 2, which is this employee warning notice; it's the blank one. I'm sorry.

A. That's okay.

Q. Do you recognize that form?

A. Yes.

Q. Have you, in the past, filled that form out on any employees?

A. Never.

Q. Okay. Let me show you—

MR. BIXLER: If we can show the witness—I don't know what's going to be easiest—General Counsel 4 and 5?

JUDGE GROSS: Let's go off the record.

(WHEREUPON, there was an off-the-record discussion.)

Q. Now, Ms. Cordrey, do you have General Counsel Exhibits 4 and 5 in front of you?

A. Yes. I do.

Q. And those are the forms entitled "Employee Counseling" forms—

A. Yes.

Q. —which you filled out on—No. 4 is on Jean Stanhope, and No. 5 is on Joanne Jenkins.

A. Yes, sir.

[242] Q. Correct? Okay.

Now, you understood one of your duties to be to fill out these forms on employees when the occasion arose; correct?

A. Yes.

Q. Okay. And I take it that you took this part of your duties seriously?

A. Yes.

Q. And I take it that you felt that it was an important responsibility of yours, to do this, when it became necessary?

A. Yes. I was told to fill them out.

Q. Okay. My question was, did you consider it to be an important part of your responsibility?

A. Yes.

Q. Okay. And would it be fair to say that, in filling out these forms, you tried as hard as you could to do a good job; on using the forms, on expressing what should be expressed in the forms?

A. Yes, hopefully.

Q. And you understood that the proper utilization of these forms was important to the employees themselves, didn't you?

A. Yes.

Q. Okay. It would be important to them, to [243] understand what was expected of them; if they did something wrong, you could fill this form out so that they would clearly know what was expected of them. Is that correct?

A. Yes.

Q. And would you agree that it was important to their morale on the job, that these forms be filled out fairly and correctly?

A. Yes.

Q. Okay. And would you also agree that it was important to the residents, that these forms be used properly, so that if there was an aide doing something wrong, that you could correct that improper behavior on the part of the aide?

A. Yes.

Q. Okay. Now, I take it that — I believe we have — well, let me ask you: Were there incidents that would have happened on the floor, that were not exactly correct, but rather than writing somebody up, you would just verbally talk to the aide, take the aide aside and counsel the aide?

A. Yes.

Q. Okay. Not every little thing that went wrong out there would end up in you doing a write-up, would it?

MR. DUNPHY: Your Honor, I'm going to object to the use of the term write-up, because I think that implies a certain formal disciplinary procedure.

JUDGE GROSS: I think that's fair, be careful [244] about that.

MR. BIXLER: Well, I believe that term has been used by everybody, and I don't believe I was the one who introduced it; but I'll use the correct term of the form.

Q. Would it be fair to say that you would not use this counseling form for every little incident that occurred out on the floor?

A. It sort of needs an explanation.

I wrote these up when I was told to write them up.

Q. Okay.

JUDGE GROSS: What do you mean by that?

THE WITNESS: I'd go to the DON with the problem that existed, and she'd let me know whether to counsel it and document it or not, or just to have a talk with them.

Q. Now, did you take every little problem that occurred on the floor to the DON, and ask her whether you should do that or not?

A. No.

Q. Some of them you would just handle yourself, wouldn't you?

A. Yes.

Q. Without going to the DON.

A. Right.

Q. Okay. And so it would be correct that there [245] would be some things that would happen out there, which were not exactly correct, but you didn't consider serious enough to even go to the DON; is that correct?

A. Correct.

Q. And you'd handle those with the employee directly, yourself.

A. Yes, I would.

Q. Okay. Now—

(Pause)

MR. BIXLER: Your Honor, could I just have a second here?

JUDGE GROSS: Off the record.

(WHEREUPON, there was an off-the-record discussion.)

MR. BIXLER: I'd like to have this document marked as Respondent's Exhibit 4, please.

(WHEREUPON, Respondent Exhibit No. 4 was marked for identification.)

MR. BIXLER: Could we show the witness Respondent's Exhibit 4, then?

Q. Ms. Cordrey, do you recognize Respondent's Exhibit 4?

A. Yes, I do.

Q. Could you tell us what that is, please?

A. It's an evaluation on Carmelina Bean, a [246] nurse's aide.

Q. Is that your signature, in the space provided for the evaluator's signature?

A. Yes, it is.

Q. Now, I believe, based on your previous testimony, in filling out these performance appraisals you only concerned yourself with item 2, which is human relations; item 3, attitudes toward work; item 5, job capability; item 6, development; and item 7, patient care. Is that correct?

A. Yes.

Q. Now, again, filling out that portion of the performance appraisal form is one of the duties and responsibilities that you had in your position as a nurse at Heartland of Urbana; is that correct?

A. Once in a while, yes.

Q. Okay.

A. When I was asked.

Q. All right. And again, when you were asked to do this, I take it that you took that request seriously.

A. Yes.

Q. And you made a sincere effort to do a good job on filling out the performance appraisal, didn't you?

A. I'd hope so, yes.

Q. Okay. And you think you did do a good job, correct?

[247] A. I hope so.

Q. And again, would you agree that that, doing a good job on the performance appraisals, by you, was an important part of your duties, wasn't it?

A. Yes.

Q. And that's important to the employee who's being evaluated; obviously, that can affect his morale and performance, so would you agree that that's important to the employee himself?

A. Yes.

Q. Okay. And it's important to the residents, also, that, to the extent that this can help improve somebody's performance, that will help the residents; is that correct?

A. Yes.

Q. Okay. And so this would be an important function to the good operation of the facility overall; would you agree with that?

A. Yes.

Q. Okay. Now, when we go down to human relations, would it be fair to say that, before you filled this form out, that you would at least review what the items were, under human relations?

A. Yes.

Q. Okay. And then would you try to reflect on those items, as far as the individual's performance were [248] concerned, prior to filling out the particular block?

A. Would I think about it, before I filled out a block? I would like to hope so.

JUDGE GROSS: Let's go off the record.

(WHEREUPON, there was a off-the-record discussion.)

Q. That wasn't a very good question; I apologize for it. What I'm just asking is whether you would take some time to reflect on the individual's performance as far as each one of these items under human relations were concerned.

A. Yes.

Q. Okay. And would it be fair that you would say, under attitudes toward work, that you would do the same thing; that you would review what particular items on the form were to be evaluated under attitudes toward work, and you would reflect on the individual's performance throughout the period covered, and then try to use your best judgment on where they ought to be rated?

A. Yes.

Q. Okay. And you would do the same for each one of these categories that you had responsibility for; is that correct?

A. Yes.

MR. BIXLER: I would move the admission of Respondent's Exhibit 4, your Honor.

[424] (WHEREUPON, the witness was excused.)

JUDGE GROSS: Let's go off the record.

(WHEREUPON, there was an off-the-record discussion.)

Whereupon,

#### **JEAN STANHOPE,**

called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### **DIRECT EXAMINATION**

##### **BY MS. VAUGHAN:**

Q. Ms. Stanhope, would you state your full name and address for the record, please?

A. Jean Stanhope, 320 Hill Street, Urbana, Ohio.

Q. And where are you employed?

A. Heartland of Urbana.

Q. How long have you been employed there?

A. Been there six years.

Q. And you're still employed there?

A. Still employed there.

Q. In what position? What's your job?

A. Nurse's aide, second shift.

Q. Are you here pursuant to a subpoena that you received from me?

A. Mm-hmm.

Q. What wing do you work on?

[425] A. I've always worked on A wing.

Q. Which shift do you work on?

A. Second shift, 3:00 to 11:00.

Q. Have you always worked second shift?

A. Always worked second shift.

Q. Directing your attention to, well, now—for instance, now—who is your supervisor? Immediate supervisor.

A. Immediate supervisor's name is Rosemary, the lady that's—well, our supervisor, as far as that, is the DON.

Q. And directing your attention to January and February and early March of 1989, who was your supervisor at that time?

A. It was Terry, then they changed it to some other assistant DONs they had in.

Q. Do you know the names?

A. Oh, I can't remember all—we had some changes, I can't remember the names. But Terry was one, Sandy Townsend was one.

Q. Did you ever have an occasion to work with Cindy Cordrey?

A. I worked with Cindy for five years.

Q. Was she ever your supervisor?

A. To me, she was just a nurse on the floor.

[426] Q. Did you ever have an occasion to work with Ruby Wells, Julia Goldsberry, or Connie Thatcher?

A. When they went to a 12-hour shift, I did.

Q. And how would that come about, when would you work with them, with those women?

A. It was just certain days that they were scheduled to work. Like Connie Thatcher and Julie was like from 7:00 p. to 7:00—from 7:00 a. from 7:00 p. And then Ruby would be in from 7:00 p. to 7:00 in the morning, which I worked with her from 7:00 to 11:00.

Q. I see.

When you come in on a typical day, what do you do when you first come in?

A. At 3:00 we come in, we stand at the nurse's station and listen to the day report. It depends on which nurse is

on duty. Like if Julie was working from 7:00 to 3:00, she would give the 3:00 nurse's report. At 3:30, we'd leave the nurse's station and go and do our work.

Cindy was the regular—well, in the five years, she was working 3:00 to 11:00. Around 3:30, she should be getting through with the other information that the nurse would have to give her. She sets up her meds. By 4:00, she's passing her meds, at 4:00. From 4:00 to 5:00, she's on the floor, passing our pills. We're doing our bed checks, getting everybody dressed and ready for supper.

[427] Cindy can choose to go to supper at 6:00 to 6:30 or from 6:30 to 7:30. Between that time, she's still passing her meds. And then she goes to her supper—

Q. You're referring to Cindy Cordrey?

A. Cindy Cordrey, uh-huh.

Q. All right, go ahead. What else do you do on a typical day?

A. Typical day, we get everyone dressed and ready, changed, and make sure they're ready for supper, and we get them up in the chair for supper, return them, and change them in bed. We do that from 3:30 to about 5:00. And then at 6:00 we have it—there's four girls on the floor, and two of us go down to supper from 6:00 to 6:30. The other two girls stay on the floor and do the rest of picking up the supper trays, answering for the lights.

And then when my supper hour is over at 6:30, I go back on the floor, and I will finish up my section. And the nurse, whatever shift she takes to go to her supper, she starts setting up her cart for her meds.

Q. How do you know when to go to supper?

A. We go at 6:00.

Q. Who goes at 6:00?

A. The two aides will go at 6:00. We have four aides, two in front hall, two in back. One from each hall will go down at 6:00, come back at 6:30, and the other two will go

[428] down from 6:30 to 7:00.

Q. And how do you know whether you're supposed to go down at 6:00 or 6:30?

A. It's always been that way.

Q. How do you know what to do when you come in?

A. What to do? The nurse—well, the aides had trained you to do the work, and we knew exactly what we do to each one of the patients. And we get the routine together; we change everyone, we get them dressed or, you know, change them, make sure they're dry and clean, their face and things are ready for supper, hair combed—

Q. Who is "we"?

A. The four aides. The other three aides I work with.

Q. All right. Okay. go ahead,

A. And that's our regular routine. We do that, and then we have ones that are feeds, assist feeds. We make sure the ones that go down to the diningroom for supper is down there on time. We have the ones that we have to ambulate, get them ready; you know, walk them for a few minutes and then get them in their chair for supper, make sure the restraints are on them. Make sure we got bibs passed out, make sure the water is close to the patient, so they can get to it.

Q. Did you have anyone who, while you were doing your respective chores, was watching and making sure that you [429] did them correctly?

A. No, huh-uh.

Q. How did you know what to do, how to do it?

A. Like I said, they were trained first. Whoever's—and like I say, I was trained by Freda; when I started in '83, a lady named Freda trained me for my shift. And that's the way we learn how to take care of the patients.

Q. And during 1989, back in January and February, the winter of 1988-89, how were people trained, aides, if there were any new aides?

A. Any new aides, it would depend on the nurse on duty. She would ask one of the aides that had been there long enough to go ahead and orientate the new aides.

Q. And what did you do? Did you ever participate in the orientation of a new aide?

A. Yes, uh-huh.

Q. What did you do with that aide, when you—

A. Okay, that aide, I would take her from room to room, explain to her about the patients; tell the patients' names, the needs and the wants that we do for them.

Q. How often would you estimate that you see the nurses on duty during your shift? Can you give us some idea about what frequency, or where, and when, and how often you see them?

A. As often as we're in the hallways. We go in, [430] it takes us maybe 10 to 15 minutes to do a patient. In between that time, we can still go out in the hallway and see Cindy's cart out there. And she's in and out of the room, and we're in and out of the room, so we see her constantly, going back and forth to the room. Either we're ahead of her or behind her.

Q. What happens if you want to change your day that's scheduled? Have you ever done that?

A. Yes, I have.

Q. And what do you do, when that occurs? How do you change your day?

A. Okay. We have swap sheets at the nurse's station. We go up to the nurse's station. If Missy and I want to exchange days, say Missy works—

Q. Who is Missy?

A. Missy Stillgas, one of the girls I work with.

Q. Is she an aide?

A. Uh-huh, she's an aide.

Q. Go ahead.

A. And if an emergency comes up and she knows that I'm working on a—you know, I'm off on a Friday, we would swap. I would take and work Tuesday, and then she'll work for me on that Friday. We just switch our days around.

The swap sheets are at the nurse's station. We fill them out. Ruby or Cindy looks at them, they put the [431] names on the paper. Then any paperwork that they have will go to the front office. And it's on the DON's office, and she will see it the next day.

Q. Have you ever had one of those not be approved?

A. No, they've always been approved.

Q. Who schedules your work, if you know?

A. The DON schedules our—fix up our schedules for the month.

Q. Are you ever asked about your preference for days or something like that, anything like that, when you want to work, before the schedule comes out?

A. No. Our regular—you know, our regular schedule is the way it goes. And if you want to work an extra shift, you usually ask. If there's going to be short, you usually ask and you fill in for that day.

Q. What happens if you have to be off sick?

A. Well, you're supposed to call in and let them know that you're sick, and then they should be able to find a replacement.

Q. And you work from 3:00 to 11:00?

A. Mm-hmm.

Q. Who do you call, when you call in sick?

A. Well, I used to call in just for—on A wing, and let the nurse know on A wing, that I was gong to be sick.

[432] And this way they'd know that you're going to be sick, and they send a message down to the DON's office. And she should be able to find a replacement.

Q. Have you ever been asked to stay over your shift, instead of going home at 11:00? Have you ever been asked to stay over?

A. Yes, I have.

Q. How does that come about, or what happens, and what circumstances?

A. Okay. If someone called in for 11:00 to 7:00, and they called in sick and said they can't come in, then we'll give the message to Cindy and Ruby, and they will try to find a replacement. If they haven't found a replacement, then Cindy and Ruby will come back and ask us, would one of us mind staying over and pulling a double. And we can. And if they find a replacement, we don't. If they're between finding a replacement, we'll agree to stay until they find a replacement. If not, then we stay and pull a double shift.

Q. How is it decided who stays over?

A. We're asked. You know, we're not told; we're just being asked, could we stay over.

Q. And if there's only one needed, how do you know which one stays?

A. The nurse will ask all four of us. When we're all together, she will ask us if one would like to pull a [433] double. And then we have a choice to say yes or no.

Q. Have you ever accepted, in that situation?

A. Mm-hmm.

Q. Have you ever turned it down?

A. Yes, I've turned it down. Plenty of times.

Q. Have you ever been required to stay over and work extra?

A. Yes. If one of the aides was going to be an hour late, they will ask us, you know, request if one of us will

stay over until the aide shows up. Then Ruby or Cindy had to initial my timecard.

Q. But my question is, have you ever been told that you have to, or be subject to a reprimand?

A. Hmm-mm.

JUDGE GROSS: The answer is no?

THE WITNESS: No.

Q. Have you ever received a written reprimand or any disciplinary action?

A. Just a conference I had with Cindy.

Q. Well, describe that. What happened?

A. I had two aides that I worked with, went into the DON's office and told them I wasn't doing my work, I was bossy, I wasn't doing this and that. And it was Marianne Curl that was our DON. She contacted Cindy, and then Cindy got hold of me, took me away from my work, told the other [434] girls that she had something she had to do. We went and talked about it, and that was it. It wasn't nothing to be written up. It's just that she had a conference with me.

MS. VAUGHAN: Would you hand the witness General Counsel Exhibit No. 4?

Q. Have you ever seen that document before? What is that?

A. This is what Cindy had talked to me about.

Q. And where were you when she talked to you about that?

A. We left the floor and went to the Minnie Pearl room on dining, off the diningroom, at the Heartland.

MS. VAUGHAN: May I have the witness shown Respondent's Exhibit 2?

Q. Have you ever been issued one of those, or have you ever received one of those?

A. Huh-uh.

Q. I'd like to direct your attention again to this document, General Counsel Exhibit No. 4. What was your understanding that that was, that document?

A. It was just to let me know that there was a problem on the floor and the girls said that I wasn't doing my work.

Q. To your knowledge, did anything else happen because of that?

[805]

#### LINDA COOPER,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. BIXLER:

[809] that type of care?

A. Correct.

Q. You said that you were the Director of Nursing, was that the entire time that you were at Heartland of Urbana?

A. Correct.

Q. You were hired for that position?

A. Yes.

Q. Would you tell us what your duties were as the Director of Nursing at Urbana?

A. First and foremost, I was Director of the nursing staff. That is, I was the department head for nursing. This meant that I oversaw all nursing personnel, licensed and non-licensed. That is RN's, LPN's, nurses aids, affiliated nurses such as documentation nurses, treatment nurses, be they full time, part time or relief. In service-education was part of my responsibility, to teach, to train, to hire, to counsel.

Q. So, you had overall responsibility for the nursing department?

A. Right.

Q. And to whom did you report?

A. To the administrator.

Q. Now you mentioned several different categories of nurses. What is a treatment nurse?

[810] A. A treatment nurse is a nurse employed primarily, that is what the job description states, for the care giving to residents who have treatments of one form or another. A treatment being outside of their basic nursing care that is necessary for that shift such as dressings to an ulcer, dressings to a wound, tube placements for feedings.

Q. So the treatment nurse would focus or concentrate her attention on those particular treatments?

A. Correct.

Q. You also mentioned a documentation nurse. What would a documentation nurse do?

A. Her title was patient assessment nurse. This stems from the fact that in Ohio we have, can be a minimum of three monthly reviews on patient assessment, that is documentations of which reimbursement is stemmed from. The documentation nurse is not involved with direct patient care other than for file and chart access and documentation usage.

She will deal with documentation, ordering, initiation, completion of admissions, in some cases charting, patient care plan reviews, updating. Does not have involvement with unit rounds, direct patient care, medication tasks, anything of that nature. Monday through Friday 8:00 to 4:30.

Q. While we're at it, what hours does the treatment nurse work?

[811] A. Usually 7:00 to 3:00.

Q. What days did she work?

A. A five day work week. However, there is a treatment nurse on 7:00 to 3:00 shift seven days a week. So the treatment nurse would alternate week-ends.

Q. Is the treatment nurse a LPN or a RN?

A. At the time I was employed there, she was primarily an LPN with an RN coming in on relief. However, it may be either.

Q. A patient assessment nurse would be?

A. An RN.

Q. An RN, okay. There would only be one treatment nurse or patient assessment nurse on shift at any one time?

A. Right.

Q. I believe you also mentioned that there were staff nurses or nursing supervisors and nurse aides?

A. Yes.

Q. We'll come back to the staff nurses. Could you tell us what the nurse aides' responsibility was?

A. The nurses aides are non-licensed professionals. They work directly with the basic nursing care of the patient, i.e., bathing, lifting, helping to mobilize, showering, feeding. They report directly to the supervisor. They take their instructions from that [812] supervisor.

Q. Who is their supervisor?

A. The supervisor of the wing that day.

Q. Is that the staff nurse?

A. Yes.

Q. What kind of training or educational background does a nurse aide need?

A. It varies with the new law that has just come into effect, they will need 80 hours for training in order to take a State certified nurse aide examination. However, until that point, a lot of the training is done their past ex-

perience, maybe upon hire if I was to hire them in that given light. People may have not been an aide before therefore, they will require orientation of the work floor in the facility with the Director of Nursing and the Assistant Director of Nursing and the Supervisor?

Q. When does the new law take effect, if you know?

A. It takes effect July 1.

Q. Of 1989?

A. Yes.

Q. So prior to that, there were no formal State requirements—

A. In Ohio.

Q. In Ohio for, nurse aides?

[813] A. Unless they wished—Some facilities wished to give their Nurse Aids a certificate at the end of what breaks down to a 40 week training period at their facility. That does not necessarily mean—it did not mean that they were State certified and it did not necessarily mean that that qualification transferred to any other facility.

Q. Prior to July 1 of this year as far as you knew, the State of Ohio had no formal certification necessary from nurse aides?

A. Correct.

Q. Now before we talk about the staff nurses, could you give us an idea of the numbers of staff between nurse aides and the staff nurses on a daily basis around the clock?

A. On a day shift which is 7:00 to 3:00, that's 7:00 a. to 3:00 p.m., there will be approximately 10 to 12 nurse aides. This is at full census which is 95 to 100 residents. Sometimes more, but for now only 10 to 12 nurse aides with one supervisor on each wing, a patient assessment nurse and a treatment nurse and a director of nursing.

On 3:00 to 11:00 shift, there is a supervisor on each wing and approximately six nurse aides working 3:00 to 11:00 a

full shift and two nurse aides working 3:00 to 9:00, a six hour shift. Sometimes that varies and it could be seven nurse aides on 3:00 to 11:00, and myself for various [814] hours depending on how many hours I would work that day.

On the night shift, there is a supervisor on each wing and approximately four to five nurse aides, primarily five are scheduled.

Q. Now the night shift was from to what time?

A. 11:00 p. to 7:00 a.

Q. Now at what time—was Heartland of Urbana on 12 hour shifts for the staff nurses?

A. Correct, until May 1 on A wing and June 1 on B wing.

Q. And then what did you do?

A. Then, the supervisors all went to eight hour shifts so that they have one full eight hour shift with their nurse aides instead of a four hour overlap.

Q. Did that change the staffing of the aides at all when you went from 12 hour shifts to eight hour shifts?

A. No, because nurse aides have always be on eight hour shifts since I started at Urbana.

Q. And then how, if at all, the move to eight hour shifts affected the nurses?

A. It basically meant that they were appearing at work more days out of a work week but only working eight hours instead of 12.

Q. Would you have any more on a particular shift than you had previously?

[815] A. No, there would be still one supervisor on each wing.

Q. But now, instead of four in a 24 hour period working, you would have six?

A. Correct.

Q. Would you take the staff nurses—the nursing supervisors I should be referring to them as, and go through their daily routine for us, of what the requirements of that job are?

A. Supervisors were responsible for the unit, that is the residents and their aides for that shift. Usually they would come to work and themselves and the nurse aides, take report and listen to report, listen to what had happened the prior shift with the supervisor who was going off shift. Anything pertinent at that point would be handled by the oncoming supervisor and then transferred appropriately to her nurse aides who were on that day.

The supervisor would then allocate residents to each aide, her resident's status and acuity level. So it was a fair assignment that a patient passes. If the supervisor was an RN, it would involve intravenous medication also.

Direct supervision of the nurses aides on a daily basis for that basic patient care. Counseling when necessary, evaluating be it 30 day, 90 day or a year for the [816] nurse aides on the unit that they work with and supervise; calling families be it to inform then that a patient was due to be discharged, that there was something that happened to the resident that the family needs to be notified about.

Q. Like what?

A. A change in the patient condition, usually had someone call, a phone call incident. Also, that the patient may be refusing treatment and keep calling for that certain family member; change of condition that would be coming quick.

Q. That would be the responsibility of the nursing supervisor to call?

A. Correct.

Q. Before they called the family, would they have to check with the director of nursing?

A. No.

Q. No?

A. No. Calling doctors, changes in a patient's condition, refusal to take medications, lots of different reasons why a doctor would be called to check on his patient.

Q. Again, would they have to check with the director of nursing before they called the doctor?

A. No.

Q. Would you go into the job assignment responsibility of the nursing supervisor in a little more [817] detail, and perhaps give us an example of how that might be handled, say the 7:00 p. to 7:00 a. shift?

A. For example, there would be one supervisor on each wing and five nurse aides—

Q. Now, excuse me, who would schedule the employees to work that particular day?

A. The director of nursing.

Q. Okay, go ahead.

A. On a given day, a supervisor came to work on the night shift, she would find out how many nurse aides were due to be scheduled that day, that night to work. And then find out if they had all shown up. If they had not shown up, find out why.

Taking it first that everybody had shown up, the supervisor would then find out from the off-going supervisor the status of her residents, how many nurse aides she had on her wing that shift, and allocate to each aide a certain amount of residents. This would be to make sure that the nurse aide knew which resident she would carry for specifically regarding charting purposes. Although all the aides and the supervisors are all there for the residents, but this is primarily for charting purposes and accountability.

The nurse aides have a flow sheet and a turn sheet and a restraint sheet to chart on every shift and it's [818] their responsibility to keep that document up to date and correct.

Q. What's a flow sheet?

A. The nurses aide will specify on that if they bathed the residents, fed them, gave them drinks, fluids, how many percentage of their meal they ate, were they restrained, were they turned two hourly, did they have their hair washed, basic nursing needs that would have been carried out by the resident that shift?

Q. What's the turn schedule, I believe?

A. A turn schedule is when someone is turned two hourly or more often. It has to be signed by the nurse aide.

Q. What was the other record or chart that they kept?

A. Restraints. Some residents need to be restrained for their safety and these need to be checked every 30 minutes, released every two hours, and the area massaged and that also needs to be documented.

Q. How often is it to be documented?

A. It's documented once a shift. However, it should be documented every time that it is released, every two hours.

Q. Go ahead, you were talking about the assignment of the nurse aides to specific patients for charting purposes.

[819] A. For example, if there were 50 patients in one wing and 40 were acute and 40 were long term and—residents could be in there a while—and 10 were acute, then I would hope that the supervisor would see fit to make sure that the sign up was fair. In other words, one nurse aide who was brand new, did not get all the acute residents. I would expect to see that it was done fairly so the task and the work load was evenly divided for the resident's benefit.

Q. You use the term "acute." What do you mean by that?

A. If there is someone who may be just lying in bed waiting for a wound to heal to go home but perfectly audi-

ble and can talk and feed themselves and is continent, than someone who's comatose and may have an IV in them, an IV in place.

Q. Now are there guidelines to the nurse supervisors on job assignments? How are they supposed to go through that by—that's two questions. Are the guidelines that you put out for the nurse supervisors on how to assign work to the aides?

A. Yes.

Q. Could you tell us what those guidelines were?

A. Basically, they are take the amount of aides you have and divide that into the number of residents you have. So they have an equal number of residents a piece. [820] However, that is flexible according to status and the well being of the residents. For example, one aide would not have ten really poor patients while the others would have five who were up and about and walking.

Q. Is it the nurse supervisor's responsibility to adjust that on a daily basis?

MS. VAUGHAN: Objection. Leading.

JUDGE GROSS: Well, overruled.

MR. BIXLER: Go ahead.

THE WITNESS: Yes.

MR. BIXLER: Okay.

THE WITNESS: Even on a shift to shift basis, within the shift. With patient condition changes.

Q. Now can the number of acute patients—well, let me ask it—How often does the number of acute patients change?

A. Probably not drastically, however, every resident usually per shift—not every resident—a certain amount of residents per shift will change conditions, be it will fall, a wound tear, debilitating problems such as pneumonia. So, a resident may start off a certain shift as a regular

long-term resident could be in there for five years and half-way through the shift become critical.

Q. Can the acuity level of a resident change on a daily basis?

[821] A. Yes.

Q. Could you give us an example of how that might happen?

A. Yes. One patient—there are several reasons for that happening,—is always up in a wheelchair, feeding himself, dressing himself most of the time. Over a period of 24 hours, if this started in the morning, it was noted that he had a little bit of difficulty breathing. However, this was not abnormal, the patient was prone to anxiety phases. By 3:00 to 11:00 shift, and I was still in the building, the patient was having some more problems breathing but not enough to promote to stress. But by that evening, late evening, the patient was admitted with acute pneumonia to the emergency room and was actually admitted to the hospital.

Q. Using—

JUDGE GROSS: Let's back up a second. So the patient's having trouble breathing and it gets worse and it gets worse, and let's say this is all happening at about midnight.

THE WITNESS: Uh-huh.

JUDGE GROSS: Okay, and then at midnight?

THE WITNESS: Uh-huh.

MR. BIXLER: What happens?

THE WITNESS: The supervisor would assess, do [822] heart sounds, lung sounds, stethoscope, administer oxygen, call the doctor, call the family, wait for the doctor's orders, transcribe the doctor's orders, carry them out, give emergency medication and transfer if necessary to the emergency room.

Q. At what point in that process would you become involved if at all as the director of nursing?

A. Not necessarily at all until the next day when I came on, I found I was one resident short on my census. I might have a slip which tells me what happened during the night and then I would go to the floor and check up and then usually call the hospital myself and check on the residents also.

Q. But the nursing supervisor would go ahead and handle that situation without seeking your approval at any point?

A. Yes.

Q. Now you were testifying about a situation when everybody shows up on a shift, as I recall. Does it very often happen that there are absences?

A. Yes.

Q. What would happen in that situation? How would the nursing supervisor deal with that?

A. The supervisors on both wings would get together. They would say okay, how many do you have, how [823] many do I have? Lump them (both the aides) together, for want of a better term. And say, okay well we have seven instead of ten. Then it would be up to the supervisor whose people who got called in prior to the shift to start calling first of all, the aides who were off that day usually to see if they could come in. Then aides who were coming on the next shift to see if they could come in earlier. Aides who were on the night shift to see if they could come in at all. From then on, they would call pool nursing.

Q. Are there instructions to the nursing supervisors on this—following this rotation in trying to replace somebody who calls off?

A. When I started at Urbana, it was a given. This is what I understood. That they knew to call. I set the standard on how many there should be regarding State

minimum, State regulations. I was pretty much aware that everybody knew that. Regarding calling pool, yes.

Q. Yes, what?

A. I'm sorry. Yes, they did know that they could use the pool.

Q. But what I'm getting at is you went through the process or procedure about calling to see if somebody could stay over, calling people who are off, calling people that are coming in the next day and so on and so forth. Is there a set procedure, one after another that they're [824] supposed to go through in trying to replace somebody?

A. I'm not sure if—I know I held a meeting regarding that effect. I am not sure when I held it.

Q. Okay. Well, I'm just asking, were those guidelines there at the facility?

A. Yes, I believe so.

Q. Do the nursing supervisors—

MS. VAUGHAN: Your Honor, excuse me. I'm going to impose an objection I think on that. I know the witness has been consistently referring to the LPN's and RN's as supervisors and I let it go because apparently that's what she's comfortable with. I would object to counsel using such a conclusionary term. I think that's what we're here for—one of the issues were here for and that's up to Your Honor.

JUDGE GROSS: The term "supervisors" as used in an organization doesn't have to square at all with the term "supervisor" as defined in National Relations Act. I'm going to overrule your objection because it sounds to me as though Ms. Cooper is familiar with or is used to using the term "supervisor." I don't see any problem with Mr. Bixler using them in those circumstances. It, as far as I'm concerned has no meaning in relation to the issues in this proceeding.

MS. VAUGHAN: Thank you, Your Honor.

MR. BIXLER: Thank you.

[825] Q. Would the nurses be responsible during the shift for break times or lunch periods of the nurse aides?

A. Yes. A lot of the nurses aides quite often, used to like to buddy and go to breaks with each other. But it was up to them to tell their supervisor and say, "we're all going is this okay?" Or it was up to the supervisor to see a certain amount of people remained on the floor to cover the floor safely, to allocate people to the dining room to monitor the dining room, to allocate people to the feed. And so it was up to them to make sure that all the breaks were taken at an appropriate time.

Q. How many breaks would a nurse aide get during the day?

A. They usually get a 15 minute break in the morning. For example, the 7:00 to 3:00 shift, a 15 minute break in the morning, a 15 minute break in the afternoon for coffee and a 30 minute break for lunch.

JUDGE GROSS: Can we go back a second?

MR. BIXLER: Sure.

JUDGE GROSS: You said something about allocating nurses aides for feeding?

THE WITNESS: Feeding residents.

MR. BIXLER: I was just going to go into that, Your Honor.

JUDGE GROSS: All right.

[826] MR. BIXLER: And you also mentioned dining room monitors, I believe?

THE WITNESS: Yes.

Q. Would you tell us what the nurse's responsibility is in terms of assigning the dining room feeders and monitors.

A. Heartland of Urbana has a very large dining room. There are two seatings—there are two seatings starting at

11:00 and 11:30. The people who use the dining room are semi-ambulatory but the main criteria is that primarily they can feed themselves.

So the dining room monitor is a person assigned by the supervisor on that shift to go and make sure that in essence everybody has a second cup of coffee, nobody chokes, everybody is safe eating, there isn't any fighting, that everybody is settled and eating in a proper manner. And to chart percentages of meals taken for those who are being monitored in the chart at that point in time for fluids, etcetera.

Q. Now what does a dining room feeder do?

A. On the opposite side of the dining room there is an area where residents need to be 100% fed are taken in the room in wheelchairs or their geriatric chairs. There are certain aides assigned to go to this area at a given point in time and feed the residents. The rest of the aides are [827] allocated by the supervisors to stay and cover the floor while the other aides are feeding.

Q. Who is responsible—are there some patients or residents who cannot leave their room for the lunch meal?

A. Yes.

Q. And who's responsible for seeing that they are fed?

A. The nurses aides remaining on the floor.

Q. How would their trays get back to the floor?

A. What happens there is, a number of trays come up in a consecutive fashion and so the feeders are usually done towards the end of a shift. That is the meals do not get cold and they are in one lump area. And one aide can feed various residents. The people who are on the floor, the aides on the floor, quite often are supervising nurses who need assistance with feeding, whether they are actually their allocated resident for that day or not.

Q. Does the—do nurse supervisors have authority to assign aides from one wing to another or is that something you do when you figure out the schedule?

A. Initially, I put a nurse's name on a schedule. There are also long term aides who have worked there for many years who prefer to work on one wing and apparently have done so for many years. I didn't want to interfere with that. However, if on a given day, there were too many on that [828] particular wing and not enough on the other wing for whatever reason, then the supervisors on the wing with an excess would ask and their aide would go over to the other wing to help out. If nobody volunteered, then the supervisor would in essence request that they go.

Q. Now with respect to changing shifts from the day shift to the afternoon shift to the evening shift, do the nurse supervisors have any authority in that area?

A. I'm sorry.

Q. As far as changing from one shift to another, nurse aides, what is the authority of the other nurse supervisors with respect to that?

A. The supervisor may ask an aide from one shift to come in and work another shift to fill a gap left by an ill aide, for example; to call someone in off on their day off, ask them to come in early for a shift, that is they would work four hours extra. They would come in maybe four hours early to help cover a gap in time.

They also, some aides, when they come on shift, especially the week-end, may realize they have something planned for the next day that came up unexpectedly. I am not in the building at that point and what happens then is they fill a request slip out which is a change in days. So the aide wants to work this day will swap with this aide. They would both put the day they were going to work and then [829] they would both sign it. And the supervisors would

then approve that and there was a place for her to sign that, him or her to sign that.

And then they come into my office and then I glance at them and then I collate them with the schedule primarily just to make sure that these people know are over here or whatever. And make sure that the schedules is always up to date with people's name on them.

Q. Now earlier you mentioned pool nurses. What are pool nurses?

A. Pool nurse may be aides, LPN's, or RN's or treatment nurses. They are employed by an agency outside of Heartland of Urbana. That is, they are not employed of Heartland of Urbana. There are many nursing agencies.

A pool nurse is someone who would be requested as a last resort for a gap that was inadvertently made in the schedule to cover a shift at the facility at this point in time. They would be recruited by calling a certain agency that the facility was familiar with and was comfortable with. And then they would be told that this person would be coming to work that shift, that day.

Q. Now, who has authority at the facility to call a pool nurse?

A. The supervisors, the administrator, the director of nursing.

[835] They have a—every new aide has a check-off list of tasks and skills that needs to be signed and dated and completed by their supervisor. That is then an account of their past, not only training from the nursing management department, but also from their floor and their supervisor. It then goes in their file as part of their record.

Q. I don't believe I asked you about overtime—Do the nursing supervisors have any responsibility or authority with respect to overtime?

A. Yes. If they, as I said before, ask someone to come in to work four hours of the shift they weren't due for; for

example, if someone was working 11:00 to 7:00 and they asked them to come in at 7:00 to help cover a four hour gap, then they automatically are proving overtime because they know anything past the regular eight hour day, or in the essence of that nurse aide, be it a 75 hour pay period, would be automatic overtime.

Also, if a patient's condition warrants it or a stop-in warrants it, then they will say would you please like to stay four hours over or two hours over to help with feeding. They approve overtime at that point and they sign the aide's time card.

Q. Do the nursing supervisors have any responsibility as far as supplies for the floor are concerned?

[839] Respondent's Exhibits 2 and 3?

BY MR. BIXLER:

Q. Mrs. Cooper, did the nursing supervisors have any responsibility in the area of discipline of nurse aides?

A. Yes they did.

Q. Okay, what is their responsibility?

A. If they find something out of order, it is their responsibility to find out where the problem occurred, who is responsible and counsel them and if necessary, warn them verbally or in writing and discipline them accordingly.

Q. Are there forms at Urbana for issuing the warning notes?

A. Yes there are.

Q. Can you identify Respondent's Exhibit 2 for us? What is that?

A. This is the form that is used to warn a nurse aide.

Q. Now where are those forms kept at the facility—where were they kept while you were there?

A. On both wings and in my office.

Q. What do you mean on both wings?

A. On both units, A wing and B wing. There is a little folder – file type folder – up about three feet high which sits under the nurses desk at the nurses station which has various forms and aides flow sheets, nurses notes and to [840] re-stock the chart. And these were in there and I kept another supply in my office which was where the stock came from initially.

Q. Now, for what types of things would a nurse aide receive a warning notice from a supervisor for?

A. Tardiness, misconduct, physical abuse to a resident, mental abuse to a resident, lack of respect and privacy, disregard for patient safety, disregard for – for assignment from a supervisor in the sense of insubordination.

Q. You mentioned misconduct, what did you mean by misconduct?

A. Foul language in front of a resident for a given point, un-cooperation with a supervisor to the detriment of a resident, excluding personal.

MR. BIXLER: Can we have General Counsel Exhibit 5? (Discussion)

Q. Can you identify the General Counsel's Exhibit 5 that was just given to you, Mrs. Cooper?

A. Yes I can.

Q. Okay. Now what is that?

A. This is a counseling form. This is when a supervisor would see that an aide was having a problem be it work related directly to a resident, communication problems with herself, himself or other employees, a detriment of a [841] resident; to sit down with the person concerned and talk to them trying to solve the problem. A lot of these also have a positive effect, they're not necessarily negative.

Q. What is your understanding of the difference in the usage of the two forms you have in front of you?

A. This one is used quite often initially. It's a verbal warning, it's not necessarily warranted. Maybe someone you know is having personal problems that is affecting their work standards. I would not go straight to personally an employee warning of this. I would like to sit down with them and counsel them.

If someone does do something of a grave nature that I feel needs not counseling but definitely needs nipping in the bud, then I would start with the C question, here, usually.

JUDGE GROSS: I would like to get the record to reflect that Mrs. Cooper was first referring to General Counsel 5 and the last reference was General Counsel 2 – excuse me, Respondent's 5 to Respondent's 2.

MR. BIXLER: Thank you. So Respondent's 2 and General Counsel 5, Your Honor.

JUDGE GROSS: Right. You are right. The numbers are right, the designation is wrong.

MR. BIXLER: We could show the witness Respondent's Exhibit 3.

[842] Q. Can you identify Respondent's Exhibit 3, Mrs. Cooper?

A. Yes I can. This is a performance appraisal, also known as an evaluation form.

Q. Okay. Now who has responsibility for filling out that form?

A. The supervisor for nurse aides, myself for supervisors and one similar, the administrator for myself.

Q. Now could you – excuse me – do you have Respondent's Exhibit 3 there?

A. Yes.

Q. Could you tell us the process or the procedure that the nursing supervisor is supposed to go through with the nurse aide in filling out that form?

A. Depending on whether this is a 30 day, 90 day or whatever evaluation, the office prints a list at a certain point in time to tell the director of nursing when a person is due for an evaluation. This list comes to me. I then either—I do it of two ways—if I have any of these in my office, I write the name at the top and their position and put a little sticker note at the top and leave it for the supervisor on their shift who they work with, saying these people are due for the evaluations, please would you see that it be done.

Or these are also on the floor. So if I know [843] they're on the floor, then I will just leave a note for the supervisor and she will fill the name in and everything else.

Q. Now how much of the form does the nursing supervisor fill out? If you'd take a look at that. For example, who has responsibility for the first section under "Punctuality."

A. The supervisor. Sections 1, 2, 3, 4, 5 including Comments, 6 and 7 are filled out by the supervisor. Quite often, also, overall evaluation is going from excellent to below standard is also filled out. "Continued Employment" sometimes is, sometimes isn't. Then they sign at the "Evaluator." Then the form comes to me. I oversee it. I then send it back to the supervisor. Then she sits down and discusses it with the nurse aide and then the nurse aide signs it.

Q. Now the discussion is—your testimony is that it's between the nurse aide and supervisor rather than between yourself and the nurse aide?

A. Oh yes. Sometimes what will happen is it's all filled out and all signed by the aide. When I get it, all I have to do is just put my "Reviewed By Department Head."

Q. Now how often are these to be done?

A. On employees, on initial hire, after 30 days and then we usually do it 90 days and then annually or prior,

[844] if there is a problem that we're seeing.

(Pause)

MR. BIXLER: Can we have Respondent's 1, please?

(Discussion)

Q. Could you review Respondent's Exhibit 1, Mrs. Cooper, and then tell us if you recognize that document, if so, what it is?

A. This is the job description for a staff nurse that is currently at Heartland of Urbana. This is the set format that we would issue upon orientation to a new hire as a staff nurse coming into the facility as their job description.

Q. Now is this staff nurse position a position you have been referring to as supervisor on shift?

A. Correct.

Q. Now we've also had testimony about a designation called charge nurse. Were you involved in implementing the charge nurse designation?

A. Yes I was.

Q. Okay. Could you tell us what that designation means and how it was used at Heartland of Urbana while you were there?

A. The charge nurse is an additional title without additional duties given to any particular supervisor [845] on any particular shift regardless of LPN or RN. I tried to split the role fairly.

This is a position that is mandated according to long-term care facility regulations which states that in the absence of a director of nursing, a supervisor, one of the supervisors in house will be, in essence, the senior supervisor to handle an emergency situation such as a tornado, an evacuation, something of a grave nature. First and foremost, primarily there was never any addition in duties at all.

Q. So on a daily basis, there would not be any additional duties for a charge nurse?

A. No.

Q. Now, Mrs. Cooper, would you please tell us what your assessment of the nursing department at Heartland of Urbana was shortly after you arrived, after you'd been there for a while, what was your assessment of the nursing department?

A. I felt that there was need for more nurses in the building. The nurses who were presently employed needed guidance and a more structured working environment so they would know exactly if they were able to fulfill their roles. To do more in-service education. To boost the morale of the nurse aides and service staff further. To improve the quality of care, that is direct patient care and also

[871]

#### CROSS-EXAMINATION

BY MS. VAUGHAN:

[886] Q. And you referred to the fact that you were on call 24 hours. Is that what you were on call for?

A. Absolutely.

Q. You were available at all times to be called if there was any problem of any kind?

A. Yes.

Q. Were there any instructions that you gave to the LPNs to not call you on? Were there any—excuse me—Did you give the LPNs or nursing staff any instructions to not call you if it was a certain topic or a certain situation?

A. Not that I'm aware of.

Q. They were free to call you about anything?

A. As far as I'm aware, yes.

Q. But I believe you testified that you saw less—or at least you had fewer personal conversation with Ruby

Wells and Cindy Cordrey—they normally worked at night, is that correct?

A. That's correct.

Q. So you did not have an occasion or as much of an occasion to observe their working habits, would that be correct, as the day shift nurses?

A. The majority of my time was divided between

[960]

#### CONNIE THATCHER

having been first duly sworn, was called as a witness herein, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MS. VAUGHAN:

[984] Q. Had you ever missed twice in a month prior to—

A. Yes.

Q. —'89 and not been written up? First of all, have you ever missed twice in a month?

A. No, no. Yes, I had and hadn't been wrote up.

Q. Have you ever—okay, your shift started at 7:00 A.M.; is that correct?

A. Yes.

Q. Was there a DON or a ADON that was present that at 7:00 A.M. that you

A. No. No really—

Q. And was there a shift at 8:00 A.M. at that time?

A. Uh-huh

Q. How did those aides receive their—how did they know what to start doing?

A. They didn't until we told them.

Q. Did you ever have an occasion to or did you ever in the middle of a shift have to switch aides around?

A. Yes, I had.

Q. Would you describe how you did that and what happened?

A. Okay. If somebody had to go home say for a doctor's appointment or a child got sick, or they got sick [985] and had to go home then I would just pull one of—if I had—say I had six girls and two was in each section there is usually three sections, then I would just, you know, whichever one is the easier section for that day, you know, I would just pull and put two on one side and two on the other and one in the middle and then, you know, and somebody else—when they got done helping on their side they would just go and help the other girl. There have been times when I would go and help them if I wasn't busy with doctors or whatever.

Q. Have you ever filled out or helped fill out an evaluation for an aid?

A. I think I have once.

Q. Would you describe when that was?

A. Okay, I don't know the day, but it was in March. Sandy Townsend.

Q. Of '89?

A. Of '89.

Q. Have you filled out any evaluations prior to March of '89?

A. No, ma'am.

Q. In March of '89 what happened?

A. Sandy Townsend had brought the evaluations for me, on our side. There was only a couple that I can remember. There were only two or three things I had to fill out and she told us what to fill out and what not to fill out [987] Q. As far as you recall, you did three?

A. I think I did three of them.

Q. What did Sandy Townsend—what instructions did she give you with regards to those three aids evaluations?

A. She said it was—she said that there was some things that we would fill out and she said where for us to sign it at. Personal appearance, I don't think we were allowed to sign that one. And over here where it says recommended continued employment we couldn't do that. Where it says—I didn't discuss that with anybody. Overall evaluation, we couldn't check those.

Q. Did you do the absenteeism or the attendance?

A. No, I don't think we could do that either because we didn't know what their records was.

Q. What did you do with those—did you do that for those three aids?

A. Yes, I did.

Q. What did you do with the evaluation forms after you filled out the parts that you had been told to?

A. I think she told us to lock them up under the lock up and she would get them later that evening—she would come down and get them that day.

Q. Did you add anything further to do with those evaluations forms?

[988] A. No, that was it.

Q. Did you ever talk to any of the aids or discuss their evaluation forms with them that you filled out?

A. No.

Q. Did you ever—not just limited to March of '89, did you ever recommend that an aid get a wage increase on the basis of his or her evaluation?

A. No.

Q. Did you know whether the three aids that—whether or not the three aids whose evaluations you helped out, fill out, received wage increases?

A. No, I don't.

Q. If you know, who gave the aids their evaluations and discussed them with them, if you know?

A. No, I don't.

Q. Did you ever have an occasion or what would happen if an aide called in and wasn't able to make his or her shift?

A. If I took the phone call?

Q. Did you—who took those phone calls[?]

A. Well, in the daytime—well, usually if somebody called, you know, and wasn't coming into work that day when I got there, then the night nurse had taken the phone call.

Q. What would happen if an aid would call in

[1007]

#### CROSS-EXAMINATION

MR. BIXLER: Has the witness provided an affidavit to the court?

BY Mr. BIXLER:

[1010] it, you know, nobody had changed it or until Linda had came.

Q. You also testified that many, many times you had to take that home to work on, that assignment sheet?

A. Right. Because I was not—like I said, I had not been equipped to do any assignments. I just never did it and you know, I would take them home and work on them because I didn't know what else to do, you know.

I never delegated that kind of work out, you know, It was always done for us. So I would work on it and try—which was the best way trying to be fair to the girls so they wouldn't have a heavier load than the other one.

Q. You mentioned that there was a easier section for a particular day. Would these sections be, I guess, depending on what you were going to do with the residents in that section, the sections each day would—

A. Well, it is not that one section would be easy. It is just that patients got showers twice a week and when they

had a shower day, it was a rush. Those girls were busy on shower days. So you tried not to stick somebody two days in a row on showers. Give them a break. Let them have an easier section, if you want to call it an easier section.

None of them were easy, but at least you wasn't busting your butt. You get them showers done before a certain time to get the people showered, dressed, and up for the day. So I tried to delegate it that way, you know.

[1011] Q. You would work on the assignment sheets at home, about how long would it take you to do the assignment sheets?

A. For me, two or three hours.

Q. Would you do that for a week or a day?

A. I worked on them all week long.

Q. All week long?

A. Yes.

Q. Now, after Linda Cooper came and set up the assignment guidelines that she did, and then you were eventually given a warning related to that, I think you've seen that today; is that still in front of you?

A. Right, yes.

Q. I believe it is General Counsel Exhibit 29.

A. Yes.

Q. And you've already testified about how that came about. Now, after you were given that warning, did you have any further problems with the assignment of aids or did you aids to your knowledge complain about their assignments after that?

A. The only one that complained was Clara Moore that I know of. And she was the only aide that came to Linda and complained that the work load was not fair.

Q. It was just that one time which ended up to be the warning?

[1028] A. No.

Q. The three aides who you participated or had something to do with their evaluations in March, were those the only aides that you worked with?

A. No.

Q. With regard to the—you answered some questions by Mr. Bixler about struggling with these assignments or how to delegate nurses aides to certain patients, why was that such a struggle?

A. For me?

Q. Yes. What was in the decision making that made it a struggle for you?

A. I was just trying to be fair to the girls and make sure, you know, somebody didn't have more of a workload—we had total patient—we had patients that were a lot of care and you know we had some patients that had little care. The section they were put in, sometimes made it difficult because then we had 15 down—it was just—the patients were not—I don't know how to explain—the patients were not in the rooms as the halls went to make it easy. To try to be fair with the girls that somebody didn't have three hard ones and three easy ones. Sometimes they were spread out across the building—you know, you might have ten rooms down here that have all the easy ones and all the hard ones up here.

[1029] Q. So, when you went through these—what did you do first, divide the patients rooms into sections?

A. Right, yes.

Q. When you were trying to decide how to divide those patients into sections, what all did you have to consider?

A. I just—if they were like patients that had to have like two people to lift them instead of just one girl to lift them, if it was their shower day, if they were sick, I mean, really sick like if they had tubes or things like that, you know, which we had a lot of those that—where if they

were ill that day and had to left in the bed and had to take vital signs, temperature taken and some with high fevers had more attention, you know, like bathing and things like that those considerations.

Q. Was it primarily trying to decide how much care a patient required?

MR. BIXLER: I object to the leading nature of the question.

Q. What were the primary considerations that when you divided up the sections.

A. Basically, just how much care that patient needed. If it took one person or it took two people.

MS. VAUGHAN: I have nothing further, you [sic] Honor.

[1030]

#### **RE-CROSS EXAMINATION**

MR. BIXLER: I have just one question.

BY MR. BIXLER:

Q. Your overall objective on working on the assignments and spending as much time as you did, was to be fair to the aides in terms of their workload; is that correct?

A. Right. So that the aides were, you know,—so the aides would not have—one would have to work harder than the other one and to make sure also that the patient got taken care of, too. But just so that the girls would not have to—just to be fair to the girls so one wouldn't have to work harder than the other one.

MR. BIXLER: No further questions.

MS. VAUGHAN: I have nothing further.

JUDGE GROSS: Let's go off the record.  
(Off the Record)

#### **JULIA GOLDSBERRY**

having been first duly sworn, was called as a witness herein, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MS. VAUGHAN:

Q. Ms. Goldsberry, would you please state your full name and address for the record, please?

A. Julia Ann Goldsberry, 1225 Henry, Urbana, [1056] Q. Is that – did you ever participate in any other evaluations?

A. No.

Q. I'd like to have the witness shown Respondent's Exhibit Three. Do you recognize that form?

A. Yes.

Q. What is that?

A. That is the evaluation form.

Q. Is that the form that you – to which you were referring when you said you helped fill it out?

A. Yes, ma'am.

Q. What sections did you fill out or were your instructions, first of all, from Sandy Powell as what to do with that document?

A. I didn't fill out the first part about their attendance and punctuality because I had no records here about this. Let's see, as far as how they cooperated with the other people they work with and – personal appearance, I didn't fill that out either. Let's see I didn't fill Sections One or Four and I didn't do anything with the overall evaluation.

Q. What did you do with that evaluation after you filled it out?

A. I gave it back to the assistant director of nursing and she completed it.

[1057] Q. Did you have anything further to do with it after you gave it back to the director of nursing?

A. No.

Q. Did you make any recommendations to management what should or should not be done to that employee on the basis of recommendation?

A. No.

Q. Or on the basis of evaluation – did you make any recommendations as to far as wage increases?

A. No.

Q. Did you ever recommend that the employee be promoted?

A. No.

Q. Do you know what the purpose of that evaluation is?

A. Well, I know the purpose of the evaluations that I have had was to measure a person's proficiency to what they're doing and see how good of an aide or how good of a nurse they are and whether to – whether they should be given a raise or whatever.

Q. Did you ever participate or – with the one you filled out, did you physically give the evaluations to her after it was completed?

A. No.

Q. Did you discuss it with her at all?

[1058] A. No.

Q. Did you participate in the discussion with any aide about an evaluation?

A. No.

Q. Did you ever give any employees their evaluations after they had been filled out by somebody else?

A. Oh, no.

Q. I'd like to have the witness shown General Counsel Exhibit Eleven. I would like for you to look at that Ms. Goldsberry and tell me if you have ever seen that or if the contents are familiar to you.

A. Yes, I remember seeing this.

Q. How did that apply to your job?

A. Well, it really just told me how I was supposed to divide up people – the patient load for the aides.

Q. Did that differ from the way that it had been done in the – prior to that memo?

A. Not a whole lot.

Q. In any way that you can think of or did you follow those instructions after you received –

A. Yes.

Q. – the contents of Eleven?

A. Yes.

Q. What did you do? Did that make a change or [1102] requested for you to take her out of turn, and I have no objection.

MR. DUNPHY: I would just also ask the record to reflect that we have discussed this with Mr. Bixler and he does not object to taking this witness out of order.

MR. BIXLER: That's correct.

JUDGE GROSS: Thank you Mr. Bixler.

#### SANDRA TOWNSEND

having been first duly sworn, was called as a witness herein, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MS. VAUGHAN:

Q. Would you state your name and spell your last name?

A. My name is Sandra Townsend, T-O-W-N-S-E-N-D.

Q. Where do you live?

A. I live at 3730 Cemetery Road in St. Paris, Ohio 43072.

Q. How are you currently employed?

A. I'm employed as a Registered Nurse, Staff Nurse at Eaglewood Care Center here in Springfield.

Q. How long have you been employed at Eaglewood?

A. Since May the 1st.

Q. What is your educational background?

A. I attended Clark – first I attended

[1108] THE WITNESS: I asked Linda – well, prior to Linda Cooper, I asked Brenda Stabile and after Linda Cooper came I also asked her because Linda or Brenda had told me no and –

JUDGE GROSS: Brenda?

THE WITNESS: Brenda Stabile.

JUDGE GROSS: Said, no, what?

THE WITNESS: No, that I could not have the nurses do the evaluations.

JUDGE GROSS: Thanks.

BY MR. DUNPHY:

#### DIRECT EXAMINATION

Q. At some point did you get the agreement of Brenda Stabile to allow nurses to be involved in the evaluation process?

A. Yes. We had some complaints because their evaluations weren't being done. It was a timing error and I was working shifts, I had been off ill for three weeks and – so I asked them – well, before I was ill also I had gotten behind and I asked them if I could not have the nurses do – help with the evaluations and so finally they agreed that they could do a portion of the evaluations.

Q. By they, who are you referring to?

A. Brenda and Linda.

MR. DUNPHY: Your Honor, I would like to have [1109] the witness look at Respondent's Exhibit Three?

BY MR. DUNPHY:

Q. Have you ever seen this type of document before ma'am?

A. Yes, this is our evaluation that we used down at Heartland of Urbana.

Q. What conversation did you have with Brenda or Linda pertaining to what portions of this appraisal were to be completed by the nursing staff?

A. Well, the—they could do the human relations, cooperates, courtesy and friendly, controls emotions, attitude toward work, Number Four, Number Five, Number Six and Number seven.

They could not do the overall evaluation, they could not recommend for continued employment, they could not put punctuality, Number One which involves tardiness, attendance, returns to breaks and lunch on time, et cetera, et cetera.

That came from the—the attendance part came from the front office. The overall evaluation was by me or by Linda Cooper and the—they weren't—they signed them as the evaluator and then the department head, the director of nursing, be it me or Linda Cooper, sign, and then the administrator signed and then I gave them to the individual employee.

[1110] Q. Were any of the nursing staff at all involved in—did you have some discussion with the employee after that process was completed about the evaluation where they had an opportunity to—

A. Right.

Q. —provide some comments?

A. Right. On the back they have, you know,—because they signed this I told them it did not need immediate—it did not mean that they agreed with the evaluation necessarily. But they had—that they had to sign it that they had seen it.

If they refused to sign it, I had a witness sign that they refused to sign it. Then on the back they could comment

any way they wished in their own handwriting whatever they wanted.

Q. Did any of the nursing staff participate in those meetings with yourself and the individual nurses aide?

A. No.

Q. How did you know what portions the nursing staff was permitted to fill out on a form such as Respondent's Exhibit Three and which parts they were not able to?

A. I was directed by Brenda Stabile and also by Linda Cooper.

Q. Now, regarding the evaluation of nursing

[1147]

#### RUBY WELLS

having been first duly sworn, was called as a witness herein, was examined and testified as follows:

#### DIRECT EXAMINATION

[1185] Q. Did you ever recommend that to management?

A. No.

Q. Are you familiar with a form that is called a counseling form?

A. Yes.

Q. Did you ever fill out a counseling form with regard to another employee?

A. Yes.

Q. What was the circumstances, can you give us an example when you did that?

A. One was an aide that I had been getting reports from the other aides that she wasn't doing her work. She was double—what they call double padding, putting more pads under a patient than what they should. We had one patient that would break down and get gaulded real

bad in his groin. He was to be left open to air and she was putting two and three pads underneath and pulling them up between his legs and that kind of stuff.

Q. Approximately, when was that?

A. I'm not—

Q. Was it during 1988 or during 1989?

A. Yes, it was during 1988. I don't remember exactly. Probably, like I say I'm not sure, probably around August.

Q. What did you do when you found out that she [1186] was double padding a patient?

A. I wrote up what I found on the counseling form and I talked to the aide about it.

Q. What did you do with the counseling form?

A. I put it in the box outside of the DON's door.

Q. Did you—

A. Or under the door, one of the two.

Q. Do you—did you do anything further after you turned in the counseling form and talked to the aide, did you do anything else with regard to that counseling form?

A. Other than—if it was like—I don't recall or remember whether it was brought up or not. But if it was brought up, like I may have said something needs to be done.

Q. Do you recall whether or not any kind of disciplinary action resulted through that aide?

A. I don't know.

Q. You just don't know?

A. I don't know.

Q. Did you make any recommendations with regard to this disciplinary action or further action with that counseling form?

A. No.

Q. Is that a No?

[1246]

#### PROCEEDINGS

MR. BIXLER: Your Honor, we would call Gloria Clore, as our next witness.

JUDGE GROSS: Good morning, Ms. Clore.  
(WITNESS SWORN)

#### DIRECT EXAMINATION

BY MR. BIXLER:

Q. Ms. Clore, would you state your name and address, for the record, please?

A. My name is Gloria Clore, and I live at 4801 Flatfood Road, Bable, Ohio.

Q. Bable?

A. Yeah.

Q. How do you spell it?

A. (B-a-b-l-e).

Q. Okay. By whom are you currently employed?

A. Heartland of Urbana.

Q. Okay, and how long have you worked for Heartland of Urbana?

A. Since January the 12th, 1989.

A. Okay, and you're still employed out there today?

A. Yes.

Q. Okay. What position do you hold at Heartland of Urbana?

[1247] A. I'm a charge nurse on A Wing.

Q. Charge nurse on A Wing?

A. Uh-huh.

Q. And how long have you had that position?

A. Since the first of May.

Q. And prior to the first of May, what position did you have?

A. My class-job classification was treatment nurse.

Q. What were your duties, briefly, as treatment nurse?

A. I had to take care of the treatment on A Wing 13 and B Wing.

Q. Okay. And did you work all the time as Treatment Nurse, or did you work in some other capacity?

A. When needed, I'd work as a Charge Nurse, if somebody called off sick.

Q. A Charge Nurse, is that the same as Staff Nurse, if you understand my—

A. Yes.

Q. Okay, you were a nurse on the floor?

A. Yes.

Q. What wings did you fill in and work on?

A. I have filled in on both.

Q. A or B?

[1248] A. A or B, uh-huh.

Q. Were you working any particular shift?

A. Days, seven to three.

Q. Okay. Were there 12 hour shift sometimes at Heartland of Urbana while you were there?

A. Yes, when I was there until A Wing changed to eight hours, the first of May. And I believe B Wing changed to eight hours the first of June.

Q. What hours did you work as treatment nurse?

A. Usually seven to three.

Q. And when you worked on the floor as staff nurse, what hours did you work?

A. Seven to seven.

Q. And currently what hours do you work as floor nurse?

A. Seven to three.

Q. Okay. Now, I'd like to ask to some questions about your responsibilities as floor nurse and charge nurse—

A. Uh-huh.

Q. —and I'd like to direct your attention to the area of job assignments, would you describe what your responsibilities are in the area of job assignments?

MS. VAUGHAN: Your Honor, I'm going to object—to testimony about what her responsibilities as [1249] charge nurse are since she's just come to that position on May 1, '89—I think that was after the discharges. And, I think the pertinent period here is prior to the discharges and what positions they held in the winter of '89, what the duties of the charge nurse were. It seems to me that there's been some testimony that there were different policies implemented and with regard to the duties then I think that might be very critical.

JUDGE GROSS: I'm going to overrule the objection, but I'm sure that we need a few answers met on—

MR. BIXLER: Right.

JUDGE GROSS: —testimony through that period.

Q. Okay, on that issue, let me ask you a few questions. You worked as a charge nurse or floor nurse, prior to May 1?

A. Yes.

Q. Okay. And you've worked as a charge nurse or a floor nurse since May 1, full-time?

A. Yes.

Q. Okay. Now, have your—in what way, if at all, have your duties changed from the time you substituted as charge nurse on a periodic basis to now? Could you tell us whether they have, and if so, in what [1250] way?

A. The only thing I think there, is when I substituted at each station, there are assignment sheets, set up by whoever the full-time nurses are. And so when I substituted, I would take their assignment sheets and

assign aides proportionately to those sheets. Where now, I make them up myself, you know, and make corrections myself.

Q. All right. Now, did you know what the charge nurse's [sic] did in the area of job assignments prior to the time you became a full-time charge nurse?

A. In what? It's the same.

Q. Okay, were there—let me ask you, with the work that you did as a charge nurse after May 1st, was the same as or different than what you would have done, if you'd have been a charge nurse prior to May 1st?

A. As far as I'm concerned, it's the same.

Q. Okay, were there—were you aware of any specific instructions that the Director of Nursing had put out for charge nurses or floor nurses in the area of job assignments that effected [sic] the way you did the job assignments after May 1st?

A. No.

Q. Would you then go ahead and tell us how you handled the job assignment responsibility, in your [1251] current position as floor nurse?

A. Okay. We have assignment sheets and you have so many people on your wing, and depending on whether you have five or six aides, I have some for five men assignments and some for six man assignments. The only—you start like at A1 and you come around at through A26. And the only thing I do different—

Q. Those are the room numbers?

A. Yes, uh-huh. There's 49 on A Wing, 49 residents on the floor. The only think I differentiate in, is that if there is a section that has a lot of what we call, "Total Care," so maybe I got 1A and I've got 1B. One might have the aide—I don't have my assignment sheets here with me.

And maybe there's eight people that are real heavy, you have to do everything, in other words. Maybe they don't

even ambulate. For 1B, I have some that will ambulate theirself, so what I have done on my assignment sheet is, you might have the first person in Room 3, Section 1, but both of those people are total.

So what I have done is the person in Bed Two, I have taken off and turned over to another assignment and only a couple like—that would be make it more even, so that one person don't get stuck with eight heavies, where the other one has got maybe four people that are [1252] ambulatory, and I try to even it out. But other than that, the assignment sheets would stay about the same.

Q. Okay. Now, do you actually work on the assignment sheets for a projectile number of days, is that what you mean?

A. Yeah, and I try to—my aides never have the same assignments, except maybe accidentally. I try to rotate them so that they get the feel of all the residents.

And then they get showers two days a week, each resident in there. So, my aide, I also see that they have showers twice a week, because I like to make it so nobody—shower day is heavier than a regular day. It it [sic] stands to reason that people get down on shower day, so I try to keep it even so nobody gets overloaded on one thing.

Q. How often do you work on these assignment sheets?

A. Well, of course, you have to work on them when you have room changes, someone passes on or someone is discharged, then we—I have masters, and I update my masters, and make new copies. So that, on the floor, there is assignment sheets when they come on duty.

Q. Okay. So, do you have to work on the assignment sheets on a daily basis or not?

[1253] A. Not usually, sometimes there are, because like I had one yesterday that I had to change, because now we

are—she used to feed herself, and now she's dependent, because her condition has worsened.

So, I did change that, I put a "D" up there, where it used to have an "A" and instead of, "Feed table," I put that she eats in her room, because she's on oxygen, we don't get her out of bed right now.

Q. So, is it correct that the treating level of the residents can change periodically?

A. Oh, definitely.

Q. Does that effect the assignment of the aides?

A. Well, yeah, because it might, I mean, if you got four that did for themselves and all of a sudden they're becoming harder, then you might have to make some changes. They'll usually bring it to my attention and I make the changes.

Q. Okay, assuming that you have—what would be a full staffing on the seven to three shift in terms of aides on your wing?

A. Six.

Q. And could you tell us how you would handle the job assignments for six aides? If you had six aides, how would you go about assigning each of the aides?

A. Well, like I said, I'd have six sheets, and [1254] that's in my six person, I guess, six man setup, and each one has a place at the top for the date and the name and also tells them their break and what duties they do.

And I just take and write their name on it and the date, and then I kind of got like a master thing, and I make sure they aren't—like I said, once in a while I do, but I try not to give them the same assignments two days in a row. I make sure—I circle the days they have showers, so I know how many times a week they've had showers.

Q. On the sheet would you list the residents' rooms or the residents' names?

A. It has like six is the room number, and the first person's in Bed One, the next person's in Bed Two. It has their first initial and their last name. Then it goes across and tells you what has to be done with each one.

Q. Do you do that for each day?

A. No, it's a master sheet, and I have copies made. And then it just has the room for the person's name that's got that assignment and the date at the top.

Q. Okay. And that, what would be—what I'm getting at, is that changed everyday or does that cover a month or a week or what period of time would that cover?

A. Each day they get a sheet and each day they [1255] use that sheet and they turn them back in to me. And at the end of my shift, I staple the five or six or whichever I had on duty together, and I put that in the Director of Nursing's box. So each day there's a new sheet, we don't use the same sheet over and over, is that what you mean?

Q. Yes.

A. Okay.

Q. And then the next day, would it be your testimony that you would rotate the aides' assignments?

A. Yeah.

Q. Okay, and would there be situations where you would have to change the particular assignment because of the acuity level of the patient?

A. Yes, I had to do that not too long ago, on the back, the back hall, because there were a couple of heavies. So, I brought the one heavy over to the other one that isn't as heavy. But it normally is not necessary everyday.

But like if I was working today and at the end of the shift somebody said, "This section's getting too heavy." Then what I would do is make that change. I'd just draw a line through it off the one sheet and put them on another sheet, if that's what's needed.

Q. Okay. So the assignments of the residents to

[1256] the aides would not be—would not necessarily be one room right after another?

A. No.

Q. —or grouped together?

A. No.

Q. Okay.

A. Now some areas are, but if there's an acuity problem, then I do intermingle, you know. It depends on whether you've got six or five men, too.

Q. Okay. You mentioned break times and lunch periods, how's that—do you—how's that handled with respect to the aides?

A. Okay, on the top of the assignment sheets, like I said, there's a date, and then room for the name. And then up here at the top, I either put first or second, and that designates your break, and also your lunch.

Below that I put "DR" which means that particular aide has the dining room. "FT" means that aide goes down to the feed table and feeds the people at the feed table. And "FL" means that aide stays back on the floor, passes trays and feeds people back there.

Q. Okay. So that's all part of what's on the assignment sheet that you give the aides?

A. Yeah, right, from the minute they pick it up, [1257] they know what they've got.

Q. All right, for an aide who's responsible for the feed table, the "FT" what would her duties be when she's assigned to the feed table?

A. Okay, usually see, they'd go to lunch about 11:00, 11:30. And then when they get back from lunch they have to start taking the residents down to the area, where they're fed.

And then the dining room announces, "Second dining room being served," and that means that they go down,

and then they take the trays from the kitchen window over to the residents.

The ones that are able to feed themselves, they take the lids off, you know, and set them up. And then they actually sit down and have to feed the ones that are incapable of feeding themselves.

Q. Now, would there also be aides who are assigned to the dining room who are not actually doing the feeding?

A. Yes, that's the one that—on my end, that's the one that has 1A. I just set it up when they have 1A they know to go to the dining room.

And they announce, "Dining room's being served," and then this aide goes down there, and she sees to helping uncover the stuff that they need. Also tracking, [1258] on a list we have, of how much everybody eats, how much they've ate that day. And she has to stay in the dining room and observe and help until everyone is transported back out to their rooms.

Q. So she doesn't have any specific responsibility for feeding the residents?

A. No, because she's in the area now, after the dining room is cleared, and everybody's back. See the people in the dining room eat first. And there is some time between that, when she's done and everybody's out. Then I do ask her to go over and pitch in with helping with the feeds.

Q. Okay. And then I believe there was another category that you mentioned, "FL"?

A. That means floor.

Q. Okay.

A. That means that after you eat lunch, instead of going to the feed table or dining room, you are responsible to pass the trays, and then to feed the people that you're not able to take them down to the feed table.

Q. Okay. Now, have there been situations, while you've worked as a floor nurse, as a staff nurse, that an

aide needed to go home early before the end of the shift, for some reason or another?

[1259] A. Uh-huh. Yes, it doesn't happen very often but, yes.

Q. Who do they come to see to get permission to go home if they have to leave early?

A. To me.

Q. Can you recall a specific situation, where that happened?

A. Well, yes, just last week it happened, it was on three to eleven but the aide that had come on wasn't feeling good. And I told her to take her temp. And she did have a slightly elevated temp.

And she had been having some problems. She's new, and the doctor told her if she had this problem to come to the emergency room.

So, after she took her temp, I did have her go ahead, and I wrote out a thing stating that she was leaving early. And I asked her to please bring a slip back from the doctor stating what he had specified.

Q. Did she bring a slip back from the doctor?

A. I don't know, because she's on three to eleven, I'm sorry.

Q. Did you have to sign her time card in that situation?

A. Normally I would, but she may have taken it to a charge nurse. This was after my shift was over and [1260] I was still there, you know.

Q. Can you recall any other situations that you've had where an individual on your shift who you were—an aide who worked on your shift who had to leave early?

A. Yes, I had an aide that wasn't feeling good. I don't remember the time, but she just didn't, she kept not feeling good, and she was having some yomitus. And she hung in there until after lunch.

And if they can, you know, if they aren't sick and running a temp, if they can help until you get the majority of the stuff done.

And then she did go home. She did bring her time card and I initialled it, that she had left early. And everybody just pitched in and took over on her assignments.

Q. Okay. Do you recall the name of the aide?

A. I'm thinking it was Clara Moore, but I wouldn't be real sure.

Q. Okay, what did you do for the rest of this shift in terms of her assignments?

A. Before she left I asked her to go ahead and fill in her flow sheets that she could, at that point. And then we left her assignment sheet lay up there and I asked everyone—the main thing is in the afternoon, if [1261] somebody has a bowel movement or urinates, you have to track how many times on their individual patient flow sheets. And I asked the girls, any that she hadn't already charted, if they had any bowel movement or urination after that, to mark it on there.

Q. Okay. Have there been situations where an individual, on your shift, has had to work overtime, beyond the end of the shift?

A. I don't recall it happening. Usually we have enough staff coming in, we really don't have that problem, you know.

Q. Have there been situations where aides on the eleven to seven shift have had to work overtime on to your shift, that you can recall?

A. No.

Q. So you have not had to approve any overtime for any aides?

A. I'm just trying to think the times I've signed cards. I did have to call somebody in the other day when

somebody called off sick. And I signed her card when she came in. I don't recall any right now, other than that.

Q. Okay. Describe that situation, you just mentioned, when you had to call somebody in, how did that come about?

[1262] A. As I recall it was a young lady that had to leave. Earlier in the day an aide that works three to eleven had called me and told me that if they needed her she could work today.

And so I called her at home and I told her, could she come in. And it was a little after three and she got there about 4:15. So, as I was leaving then, she asked me if I should initial her time card. And I said, "Clock in, and then I'll initial it."

Q. Okay, you were still there at 4:15?

A. Yeah.

Q. Okay—how come?

A. Because sometimes by the time I get everything done that I have to do, then, after I give a report, I take care of my charting that I'm too busy, sometimes, to do through the day.

Q. If an aide on three to eleven is not going to be able to come to work, who would she call? Well—yes, who would she call to report that she's not going to come to work?

A. Sometimes they call direct to the wing and I get the message. But, evidently, other times they must ask for one of the office personnel, because I'm not aware of it.

Q. Okay, when that call does come in to you, [1263] what do you do?

A. I make out an absenteeism slip and if it's through the week, Monday through Friday, then I take it down to the director's office, because she has the overlaid schedule.

And if it's on the weekend then I proceed to call the pool and see if they can give us a replacement.

Q. Okay. Would you try to call nurses who are not scheduled that day or aides who are not scheduled?

A. It depends on how many days they've already worked. And I usually try, but a lot of times you can't get them or they say they can't come in and then I always revert back to the pool.

Q. Are you authorized to call the pool directly, yourself?

A. Yes.

Q. Okay, when did you get that authority?

A. I—I've just always had it, as far as I know.

Q. You've had that authority since you began working there, if it was necessary?

A. That's the way I feel, yes.

Q. Okay. Have you—do you have any responsibility in the area of training aides or orienting aides to the floor?

[1264] A. To a certain extent when we have a new orientee, they have an orientation service they put them through. And I guess my responsibility is, when they are new, we call them an orientee, I usually put them with one of the aides that I feel does the better job to work with for the week or so, kind of as a shadow, to help out and to get on-hands, that type of thing.

Q. Okay, do you have any responsibility on an ongoing basis as to training or in-service of the aides that are already on the staff?

A. Probably as far as in-service means, no. To make sure they're doing what I expect of them, yes. If I see something going wrong then I'll call a little impromptu meeting. And I'll tell them I have seen this and they've got to change it.

Q. Can you recall a specific example when you've had to do that?

A. Oh, mine's probably more nit-picking stuff. If I find a lot of residents that don't have water pitchers within reach or at least a glass of water then I'll bring this to their attention, and tell them that it has to be within reach. And, like a call light, if I find it not where it should be, I just call them up and say we have to correct this policy, you know.

Q. Okay, are there situations that develop on [1265] the floor in which there may be a conflict or dispute that arises between two employees?

A. Well, you have—you always have that when you have people working together, conflicts, yeah.

Q. Has that happened on your shift with aides that are working under you?

A. I've had a couple of occasions where—that something like this has happened and a lot of times I tell them to try to talk to the other person, what they're feeling and if they can't clear it, then, you know, I just make sure they each understand what's expected of them.

Q. Can you recall a specific situation that arose where you may have had a conversation like that with one or more aides?

A. I just do it without thinking so much—well, I did have a problem with some aide had body odor, you know.

Q. Well, tell us about that situation.

A. Well, a couple of my girls said that they felt I ought to be aware of something, and they said this one aide was having offensive body odor.

So, later in the day I asked her if I could speak to her. And we went around, and I said, "I think maybe—I don't know how to tell you this, but I think maybe [1266] you have to be more careful in the morning and maybe use deodorant." And she said, "Me"? And the next time I smelled her she had put some on, she smelled like a rose.

So, I mean, it was kind of bad, I didn't know, but I felt I had to take care of, they said something. And a resident the other day that was just in visiting and the resident said something to me. And I said, "Well, I'll have to talk to her again."

Q. So the situation originally arose because a couple of aides had come to you—

A. They thought that I ought to be aware of the fact that she had offensive body odor.

Q. Okay. Are there other problems that have arisen, from time to time, between the aides that you have had to intervene on?

A. Well, sometimes we just have had somebody think that somebody else can do something better and you just make sure—the way I handle it, is a lot of times I have a little impromptu meeting. And I say, "This is the way things are going to be done." And usually, I think, with me approaching it as a group the person usually catches on and it seems to right itself—

Q. Okay.

A. —you know.

Q. Where would you have the impromptu meetings?

[1390] MR. BIXLER: Our next witness is Ruth Wilcox.  
(WITNESS SWORN)

#### DIRECT EXAMINATION

BY MR. BIXLER:

[1396] A. Yes, sir.

Q. Okay, could you tell me, saying in the last three or four years, how many programs you presented at Heartland of Urbana, to the best of your recollection?

A. I could refer to my notes, I know on the management and supervisory issue I have given two programs at

the facility and then I did a residential program that people from the facilities, nurses from the facility came to, at another location.

Q. Okay, do you recall when the last management supervisory training program was that you gave at the facility?

A. I believe it was November the seventh.

Q. Of?

A. '88.

Q. Of last fall then?

A. Uh-huh.

Q. Okay, and prior to that did you give another management and supervisory training program at the facility?

A. Yes.

Q. Okay, do you recall what—

A. That was in July of '84, it's the day our plane, the corporate plane crashed, I was there finishing up the program that day.

[1397] Q. Do you recall if that was July of '86?

A. Yes, it was, '86, right.

Q. Okay, and then you gave another program not at the facility but—

A. Uh-huh.

Q. —to which some employees at the facility were invited?

A. Uh-huh.

Q. Do you recall when that program was?

A. No, sir, I don't recall that date, I didn't look it up.

Q. Was that program also a management supervisory training program?

A. Yes.

Q. Okay. Now, if we could refer back just to the one that was done last November of 1988, could you describe

the format, how long it had last, where you held it and so forth?

A. The program is divided into four major focus areas, and I adapted the delivery time to the needs of the facility. As I tell whoever is requesting it, I know this material so I don't need to do it for me, it's whatever they need, and it's generally about two hours for each one of the four sections, and I was all day at Urbana.

[1398] The first section is on supervising and management, just what is a leader, how do you define a leader, what is a leader supposed to do, a supervisor, a manager, and those three terms are interchangeable.

Q. Okay, so you spent one day at Urbana and gave the presentation throughout the entire day?

A. Yes.

Q. And it was broken down into four parts?

A. Four parts. And I don't recall the exact time frame, sometimes I do this in like oh, four hours, and then have another group, sometimes I do it for an hour and a half or two hours a week or a month apart.

Q. And can you recall what you did at Urbana last summer?

A. No. No.

Q. But you did make a presentation?

A. Yes, see I'm on the record doing this five days a week in 22 states, I'm not senile, I just have a dead overload, it's hard for me to recall.

Q. Now do you have hand outs or materials that you will speak from?

A. Yes, sir.

Q. And could we have these marked as Respondent's 24? There's two copies.

(Whereupon, Respondent's Exhibit 24 was marked [1399] for identification)

A. This is the packet, what it looks like, it's in a blue folder.

Q. Let me stop you for a second, let me show you what we've officially marked as an official exhibit –

A. Oh, okay.

Q. – for these proceedings, and then ask you if this is the same thing?

A. Okay.

Q. I will show you what we have marked as Respondent's Exhibit 24 and ask you if that is the material that you passed out at the supervisory seminar at Heartland of Urbana in November of 1988?

A. Yes, sir. The one thing that's new in this packet here is on communication, some additional material, but that's the only thing that's been added.

Q. Ms. Wilcox, could you describe, for us, the seminar, how you handle it, are there lectures, overheads, exactly what, how do you handle it when you present –

A. Yes, it's pretty informal. Again, my focus is that, hopefully, I'm doing it to help them. And so I like for it to be informal where they can ask questions or we can pose problems that they particularly face in management supervising.

[1400] The first thing is to stress the importance of being a good supervisor and what it is. There are two things that a nurse needs to focus on, first of all is the mission, which is taking care of patients, that's the most important thing. And the second, equally, and it should be balanced, hopefully, is taking care of your troops, taking care of your employees. And we don't like to do either one to the detriment of the other.

And the only time you sacrifice, if you will use that term, the employees, is when patient care is at risk. And I suggest if it's Christmas Day and all the employees want

off Christmas Day the mission comes first, the mission is more important than any one individual.

Q. Now when you gave the seminar in November of '88 at Urbana, which job classification of employees was the seminar conducted for?

A. That was for nurses.

Q. That was for nurses?

A. Uh-huh.

Q. That means the RN's and the LPN's?

A. Yes, there's no distinction between RN's and LPN's, the only time that there might be would be in a clinical area where the clinical task might be different.

Q. Now you testified that the program is broken down into four parts?

[1401] A. Uh-huh.

Q. And I don't want you to relive the lectures here, but could you – if you want to refer to the exhibit, you may do that also –

A. Do I need to use this or –

Q. I think you can use your own notes

A. Okay.

Q. And I'd like you to give us a synopsis of each one of the sections of the, the synopsis of the information that you present at the seminar.

A. Okay, what is leadership and what is supervising.

Q. That's one?

A. Yes, and it covered getting the job done through people, and the role model that you serve, how people pay more attention to what you do than what you say. What you do speaks so loud people can't hear how much you're saying and people don't care how much you know until they know how much you care and that's the theme. Old down home saying the brown smelly stuff runs down hill.

If the aides aren't doing their job, you got to look at the nurse that's supervising them.

Q. Okay.

A. And that if there's trouble you need to look at that first supervisor, then.

[1402] Q. Now, looking at your outline under Part One, there's a section entitled, "Styles of Leadership," what, just in summary fashion, can you tell me, briefly, what you'd address in this subject?

A. Well, I asked them, there's autocratic, democratic—and I begin by asking them, "How many of you, when you got through nurses training said that you wanted to be a supervisor and how come you're a supervisor, was it by default?" And most of them laugh and say, "Yeah, probably." And I ask them, "How many of you would consider themselves aristocratic management supervisors?" And usually no one raises their hand. Then I give them the example if a patient codes, do they stand around and vote on it.

Q. What does it mean by, "Patient codes"?

A. If a patient has cardiac arrest. As a supervisor, as a leader, health care is not democratic—we don't stand around and vote on it. We don't vote on procedures that we want to do this procedure but not that procedure.

Sterile technique, infection control, health care is a very autocratic management system, there's one way to do it and there's policies and procedures. I use the example of medication, the doctor orders .25 of Lanolin. You don't say, well, the patient doesn't look so good [1403] today, I'll give him five. It's very autocratic, it's very specific, you give exactly what you are told to do, when to do it and how to do it. So we talk about if you are not autocratic you need to strengthen that part. And then these the democratic and the basic there. And then the fourth one I

call it crazy making, which is the inconsistent—

Q. Okay, under the subheading of, "Problem Styles," what would you refer to there?

A. Well, there's some titles to different problem styles, "One of the boys and one of the girls," is where the supervisor wants to be such a part of the pier [sic] group that they can't separate themselves and direct them.

Then there's the, "Fireman," the person who doesn't plan ahead, waits until the code happens, and then they run around and say, Oh my god, my drug box has been used or the suction machine isn't where it should be or the oxygen machine is empty, that's the waiting until problems, the surprise fireman, and there's a long list of those.

Q. And you review those in the summary?

A. Uh-huh, and then they have the handout that describes that.

Q. Okay. We're not going to go through each [1404] one of these, but under, "Measurement of good supervising," what does your lecture consist of?

A. It consists of—I can, I teach how they can tell if they're doing a good job and you can do it by sitting at the nurses desk, and you measure four things, and this can be in any kind of climate, anywhere, any time, it can be in a factory, but it's still the same four things that you measure.

First of all you measure moral, and then we discuss, we have an open discussion on how do you measure moral, what do you look for, and that's, are people friendly, do they get along, do people smile at each other, are they helping, is it a team? Then there's the group spirit, is it all for one and one for all? Do you see people reaching out to help each other?

Then there is discipline, I can measure discipline, and I don't mean the number of writeups in their personnel file,

-but do people do the right thing because it's the right thing to do?

Do people answer call lights? Everyone in the facility should answer call lights. That's a patient saying help me. The right thing to do is when someone calls for help is to go see what they need.

If there's trash on the floor, any job that needs to be done, we do it, that's the right thing to do that, [1405] and that's a well disciplined person.

And then the fourth thing is performance, and then we go over the measurements of performance, that's incident reports how many of our patients develop bed soars [sic] after they come in, what's the infection control rate, what's our death rate, how many of our people die from poor care, how many of our people get well, how many fire us and hire someone else to take care of them, quality assurance scores and the State and Federal Survey scores, that's the measurement of performance.

Q. Okay, could you skip over to Part Two—

A. Uh-huh.

Q. —of Respondent's Exhibit 24?

A. Uh-huh, "Communication."

Q. And on, "Communication," and give us a synopsis or summary of the lecture you deliver on communication.

A. Okay, why is it so difficult, I know you think you understand what it is you thought I said but what you heard ain't really what I meant and I expand on how in communication there's the sender the receiver and the message, but the most important communication tool that you have is your own behavior.

If you're a team player, if you believe in the cause, and you have enthusiasm, are you proud? I'm proud [1406] to work in a nursing home, so that's the message. I'm proud to be where I am, it's a good calling, it's a good career, and it's one that is meaningful, and you communicate that.

And then we discuss how do you talk to a person. I use some transactional analysis techniques in really talking to someone but the main message is people don't care how much you know until they know how much you care, and ways of communicating that, and helping the non-verbal communication, again, it's the behavior, the way you dress, the way you look. We go through some body language, and then listening and listening skills.

Q. Okay, now when you're presenting these programs, is it just your lecture or what else is happening during, throughout the program?

A. No, it—I would say a good portion of it is lecture format but we have discussion.

Q. Uh-huh.

A. And giving examples of aide behavior that you might want to address. For instance, what you communicate when you're—say you're passing medications and something is not being done right for the patient that the aide is supposed to be doing, there's a way of standing with your hand on your hip and pointing your finger and giving an order and then there's the way of [1407] saying come here and let me show you how to do this and that role.

Q. Okay, so the participants would have an opportunity to ask questions—

A. Uh-huh.

Q. —of you?

A. Uh-huh.

Q. And have discussions?

A. Sure.

Q. And discuss back and forth?

A. Sure, we'd be in kind of a setting like this.

Q. Would you move on to Section Three, Part Three of Exhibit 24, and would you give us a summary or synopsis of the liability of the supervisor section?

A. Yes. Quite a bit of this, because this is designed from, at this facility, on this particular day, it was designed for nurses, I cover liability of the nurse as well as the supervisor and a supervisor is always, every person is always responsible for their own behavior.

Then, as a supervisor you're responsible for proper supervising and if people are following policy and procedure, you're home free, if they're not following policy and procedure and they're deliberately disobeying, you have a responsibility and you're liable for proper [1408] supervising, teaching and holding them accountable and doing the disciplinary process.

If they're off someplace doing something and deliberately breaking the rules, you're back over here where we talked about leadership, over the long run you teach your employees I will know if you do it wrong, I may not know it at the moment but I will find out.

So that's it, you're liable for proper supervising, you're liable—I think one of the stressors, one of the things I stress is that you're responsible for, if you see something that's been being done that shouldn't be done that if you address it right then—

Q. Can you give us an example of that?

A. A negligent assignment.

MS. VAUGHAN: Excuse me, I'm going to interpose an objection. Excuse me, ma'am, I'm going to interpose an objection. It seems to me, I mean this is all very interesting, but it seems to me like perhaps we carried it far enough to get the point. If the point is that there was such a seminar conducted at the facility with employees, on the general topic of leadership and supervising.

MR. BIXLER: Well, it's management, it's supervision management. We have one more section to [1409] do, Your Honor, and I don't, you know, we—

JUDGE GROSS: Okay, go on Mr. Bixler.

MR. BIXLER: Go ahead.

A. Okay, anyway, they're responsible for making the assignments, they're following up that the assignments are done. And that if things are not being done properly, they need to correct it right then.

And one of the questions that traditionally comes up is that, you know, I don't know whether, where they are in the disciplinary process, and the instruction is that you deal with the problem right that minute.

You can do the paper work later, it can wait until you can look it up in the personnel file and find out are they going to file the warning or is this a verbal, has the person ever been taught? But you always deal with the problem when you see it and tell the employee, this may result in a write up, I'll have to check the personnel file, then the—

Q. Are you talking about the last section now, on discipline?

A. On discipline.

Q. Okay, all right.

A. But that is on what they're liable for doing is addressing the problem.

Q. Uh-huh.

[1410] A. Proper supervising.

Q. Okay.

A. Then we go into the disciplinary process.

Q. And that's the fourth section you outline?

A. Uh-huh.

Q. Okay, would you give us a summary and synopsis of the information you provide on discipline?

A. Well, we talk about where discipline comes from, what that word means, and I differentiate between being mean to people and correcting a behavior, the steps that you take in improving work habits.

And there's a handout on the rules for reprimanding, you know, do it in private and don't do it in anger and that you really want to change the behavior. And that you don't compare an employee to other employees but to the standard.

Some key points to effective discipline, I review employee contact form, and then the steps in the grievance process, discuss if they, if their discipline results in an employee being fired, how to prepare for an unemployment hearing, NLRB Hearing. And then good qualities of an outstanding supervisor is my summary.

Q. Okay. Now, that was a summary of the program that you presented at Urbana in November of 1988?

A. Yes, sir.

[1411] Q. And again who was the audience in that program?

A. Nurses.

Q. Do you recall approximately how many nurses attended that program?

A. I couldn't give you an exact number. Recalling the way that room looks probably seven or eight, somewhere—

Q. Now did you leave any of your handouts at the facility for the nurses who did not attend?

A. Yes, sir, I always leave—I usually take a box of 25 and what we don't use, they are left there for other nurses that they want to give it to.

Q. And are these presented at the seminar in a blue folder like the other ones?

A. Yes, sir.

MR. BIXLER: Okay, Your Honor, I would move the admission of Respondent's Exhibit 24.

MS. VAUGHAN: I have a couple of questions, Your Honor.

**VOIR DIRE**

**BY MS. VAUGHAN:**

Q. I believe you said that something had been added recently, something on Communication?

A. Yes, something on—

**STAFF NURSE  
JOB DESCRIPTION**

Description of the job—The staff nurse is a professional who is responsible for administering individualized, direct and indirect, nursing care. She/He assists the Director of Nursing in her responsibility for total patient care within the nursing unit and for overall management of the unit. She/He performs all professional nursing duties and assumes the role of charge nurse on her/his unit.

**Qualifications:**

1. Must be a graduate of an accredited school of nursing.
2. Must have current licensure in this state as a registered nurse or as a licensed practical nurse.
3. Some prior acute-care, nursing experience is preferred.
4. Some prior geriatric nursing is preferred.
5. Good mental & physical health, sound judgment and high moral standards and a sincere desire to work with the aged and those with a limited capacity for selfcare.
6. Must have demonstrated ability to manage and supervise a nursing unit.
7. Must have ability to make independent decisions.

**Duties:**

1. Provides for comprehensive patient care and performs the scientific principals [sic] of nursing care in the administration of all treatments and procedures.
2. Gives & receives report.

3. Makes rounds to assure the safety & well being of all residents on her/his unit.
4. Evaluates patients needs, condition, and care and assists the assistant director of nursing in developing a nursing care plan for individual patients, including rehabilitative & restorative activities, and instruction for self help.
5. Takes and transcribes physician's orders.
6. Checks patient's chart for specific treatment and medication orders. Checks patient's daily schedule. (Refer to job description for Nursing Assistant).
7. Makes rounds, takes and records vital signs as required. Checks and gives medications, gives treatments, and performs other professional services as ordered or required. These may include enemas, catherizations: lavaging, gavaging, suction; inhalation therapy if qualified; administration of I.V.'s if qualified; applying and changing dressings, bandages, packs, colostomy and drainage bags, etc.; massages and exercise; isolation set-up and care; care of dead and dying; others.
8. Gives emergency treatment when required, and notifies physician of emergency and takes and carries out physician's orders.
9. Accompanies physician on rounds and assists with examinations and treatments. Reviews patient care plan with physician. Notifies physician of automatic stop orders on specific medications. Notifies physician changes in patient's condition, and any unusual or abnormal observations.
10. Carries out restorative and rehabilitative program for patients. Instructs patients in self-help, self-care.

- Instructs relatives in home care and rehabilitation.  
Carries out pre-discharge program for patients.
11. Attempts to fulfill spiritual [sic] and psychological needs of patients.
  12. Assists Director of Nursing with supervision, orientation and instruction of other nursing personnel.
  13. Assigns designated patient care activities to the nursing aides.
  14. Gives direct assistance to nursing aids in completing patient care as needed.
  15. Appraises the quality & quantity of nursing aids performance and keeps the DON and her assistant informed.
  16. Keeps anecdotal notes to counsel or praise the nursing aides and shares these with the DON and her assistant.
  17. Maintains unit records. Performs charting duties. Maintains narcotic records. Writes charges, updates care plans.
  18. Schedules appointments and arranges for transportation of patients to other departments or facilities and clinics for diagnostic, therapeutic, dental or medical services.
  19. Participates in and may conduct inservice training meetings.
  20. Continues professional growth through current literature, inservice, and professional meetings.
  21. Assists in establishing good public relations in dealing with the community and residents families.
  22. Will perform duties on the unit assigned by the Director of Nursing as needed.

23. Will be available to work weekends as scheduled, working no more than 2 weekends in a row.
24. Will assume other responsibilities as may be directed by the Director of Nursing.

## Employee Warning Notice

126

- Verbal Warning
- Written Warning
- Final Warning
- Termination

Name:	Date:
Position:	Department:

## Reason for Notice:

- Absenteeism (show dates)
- Lateness (show dates)
- Misconduct (state circumstances)
- Work refusal (state circumstances)

## Comments and Explanation

If behavior of this nature continues, you will be subject to \_\_\_\_\_

## Employee Comments

A copy of this notice will be placed in your personnel file. It is given to you with the hope that you will improve your conduct and performance.

Supervisor	Date
Employee's Signature	Date
Employee Refuses to Sign (Witness)	Date

Your signature means this incident has been discussed with you. It does not mean you agree with all comments.

DISTRIBUTION Employee, Personnel File

M Systems, Inc.  
vised 3/88

R EX #2  
P 9/20/02

## Performance Appraisal

127

Employee's Name \_\_\_\_\_

Date Evaluation Due \_\_\_\_\_

Employee's Position \_\_\_\_\_

Today's Date \_\_\_\_\_

Department \_\_\_\_\_

Date Hired \_\_\_\_\_

Reason for Evaluation:

= 30 Days      = 60 Days      = Annual

= Other: Specify \_\_\_\_\_

1. Punctuality  
 (1) Tardiness - Days Tardy \_\_\_\_\_  
 (2) Attendance - Days Absent \_\_\_\_\_  
 (3) Returns from breaks/lunch on time \_\_\_\_\_  
 (4) Arranges for lateness or time off in advance \_\_\_\_\_  
 (5) In-service Attendance \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Human Relations  
 (1) Cooperates with supervisors \_\_\_\_\_  
 (2) Is courteous and friendly \_\_\_\_\_  
 (3) Controls his emotions for the best interest of all \_\_\_\_\_  
 (4) Works well with other employees \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Attitudes Toward Work  
 (1) Looks for ways to improve \_\_\_\_\_  
 (2) Shows initiative \_\_\_\_\_  
 (3) Is enthusiastic about his work \_\_\_\_\_  
 (4) Accepts suggestions, instructions and constructive criticism \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Personal Appearance  
 (1) Appropriate dress for work \_\_\_\_\_  
 (2) Proper grooming \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Needs improvement in: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Job Capability  
 (1) Budgets his time carefully \_\_\_\_\_  
 (2) Shows thoroughness in his work \_\_\_\_\_  
 (3) Understands that routine jobs are important \_\_\_\_\_  
 (4) Completes the job in a minimum amount of time \_\_\_\_\_  
 (5) Productivity \_\_\_\_\_  
 (6) Quality of Work \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Needs improvement in: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## 3. Overall Evaluation

OVERALL EVALUATION

Date \_\_\_\_\_

6. Development  
 (1) Has improved job performances \_\_\_\_\_  
 (2) Understands and adjusts to changes in job responsibility and procedures \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Needs improvement in: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7. Patient Care (if applicable)  
 (1) Understands goals and objectives of patient care for individual residents \_\_\_\_\_  
 (2) Is courteous and understanding towards residents - both verbally and physically \_\_\_\_\_  
 (3) Works towards facility patient care goals \_\_\_\_\_

Excellent	Above Standard	Standard	Below Standard
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Needs improvement in: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Recommend Continued Employment:

\_\_\_\_ No \_\_\_\_ Yes \_\_\_\_ With Reservations

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Evaluator's Signature \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Dept. Head \_\_\_\_\_ Date \_\_\_\_\_

This report has been discussed with me.

Employee's Signature \_\_\_\_\_ Today's Date \_\_\_\_\_

Reviewed by: \_\_\_\_\_ (Administrator)

Date: \_\_\_\_\_

Supreme Court of the United States

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No. 92-1964

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEALTH CARE & RETIREMENT CORPORATION OF AMERICA

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ORDER ALLOWING CERTIORARI. Filed October 4, 1993.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted limited to Question 1 presented by the petition. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. Rule 29 does not apply.

October 4, 1993